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EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 30th August, 2001:—

BILL NO. 80 OF 2001

A Bill further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2001.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

1 of 1956.

2. In section 2 of the Companies Act, 1956 (hereinafter referred to as the principal Act),—

Amendment
of section 2.

(a) after clause (1A), the following clause shall be inserted, namely:—

“(1B) “Appellate Tribunal” means the National Company Law Appellate Tribunal constituted under sub-section (1) of section 10FR;”

(b) after clause (19A), the following clauses shall be inserted, namely:—

‘(19AA) “industrial company” means a company which owns one or more industrial undertakings;

(19AB) “industrial undertaking” means any undertaking, pertaining to any industry carried on in one or more factories or units by any company, as defined in clause (aa) of section 3 of the Industries (Development and Regulation) Act, 1951 but does not include a small-scale industrial undertaking as defined in clause (j) of that section;’

65 of 1951.

(c) after clause (29), the following clause shall be inserted, namely:—

‘(29A) “net worth” means the sum total of the paid-up capital and free reserves.

Explanation.—For the purposes of this clause, “free reserves” means all reserves created out of the profits and share premium account but does not include reserves created out of revaluation of assets, write back of depreciation provisions and amalgamation;’

(d) after clause (31A), the following clause shall be inserted, namely:—

‘(31AA) “operating agency” means any group of experts consisting of persons having special knowledge of business or industry in which the sick industrial company is engaged and includes public financial institution, State level institution, scheduled bank or any other person as may be specified as the operating agency by the Tribunal;’

(e) in clause (33), for the words “High Courts”, the words “the Tribunal” shall be substituted;

(f) after clause (46A), the following clauses shall be inserted, namely:—

‘(46AA) “sick industrial company” means an industrial company which has—

(i) the accumulated losses in any financial year equal to fifty per cent. or more of its average net worth during four years immediately preceding such financial years; or

(ii) failed to repay its debts within any three consecutive quarters on demand for its repayment by a creditor or creditors of such company;

(46AB) “State level institution” means any of the following institutions, namely:—

(a) the State Financial Corporations established under section 3 or section 3A and institutions notified under section 46 of the State Financial Corporations Act, 1951;

63 of 1951.

(b) the State Industrial Development Corporations registered under this Act;’

(g) after clause (49), the following clause shall be inserted, namely:—

‘(49A) “Tribunal” means the National Company Law Tribunal constituted under sub-section (1) of section 10FB;’

Amendment of
section 10E.

3. In section 10E of the principal Act, in sub-section (1A), for the words “conferred on it”, at both the places where they occur, the words, brackets and figures “conferred on it before the commencement of the Companies (Amendment) Act, 2001” shall be substituted.

Amendment of
section 10F.

4. In section 10F of the principal Act, after the words “any decision or order of the Company Law Board”, the words, brackets and figures “made before the commencement of the Companies (Amendment) Act, 2001” shall be inserted.

5. After section 10F of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 10FA.
Dissolution of Company Law Board.

“10FA. (1) On and from the commencement of the Companies (Amendment) Act, 2001, the Board of Company Law Administration constituted under sub-section (1) of section 10E shall stand dissolved.

(2) On the dissolution of the Company Law Board, the persons appointed as Chairman, Vice-Chairman and members and officers and other employees of that Board and holding office as such immediately before such commencement shall vacate their respective offices and no such Chairman, Vice-Chairman and member and officer and other employee shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service:

Provided that every officer or other employee, who has been, immediately before the dissolution of the Company Law Board, appointed on deputation basis to that Board shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be:

Provided further that every officer and other employee of the Company Law Board employed on regular basis by that Board, shall become, on and from the dissolution of the Board, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if the rights in relation to that Board had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:

14 of 1947.
Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee employed in the Company Law Board, to the Central Government shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal (including the Tribunal under this Act) or other authority:

Provided also that where the Company Law Board has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the officers and other employees employed in that Board, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Company Law Board to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by that Government in such manner as may be prescribed.

(3) All matters or proceedings or cases pending before the Company Law Board on or before the constitution of the Tribunal under section 10FB, shall, on such constitution, stand transferred to the National Company Law Tribunal and the said Tribunal shall dispose of such cases in accordance with the provisions of this Act.”.

6. After Part IA of the principal Act, the following Parts shall be inserted, namely:—

Insertion of new Parts IB and IC.

‘PART IB

NATIONAL COMPANY LAW TRIBUNAL

10FB. The Central Government shall, by notification in the Official Gazette, constitute a Tribunal to be known as the National Company Law Tribunal to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

Constitution of National Company Law Tribunal.

Composition
of Tribunal.

10FC. The Tribunal shall consist of a President and such number of judicial and Technical Members not exceeding sixty-two, as the Central Government deems fit, to be appointed by that Government, by notification in the Official Gazette.

Qualifications
for appointment
of President and
Members.

10FD. (1) The Central Government shall appoint a person who is, or has been, or is qualified to be, a Judge of a High Court as the President of the Tribunal.

(2) A person shall not be qualified for appointment as Judicial Member unless he—

(a) has, for at least fifteen years, held a judicial office in the territory of India; or

(b) has, for at least ten years been an advocate of a High Court, or has partly held judicial office and has been partly in practice as an advocate for a total period of fifteen years; or

(c) is, or has been, a Member of the Indian Company Law Service (Legal Branch) and is holding, or has held, a post in Senior Administrative Grade in that service for at least five years; or

(d) is, or has been, a Member of the Indian Legal Service and is holding, or has held, a post in Grade I of that service for at least five years, or any higher post in that service.

(3) A person shall not be qualified for appointment as Technical Member unless he—

(a) is, or has been, a Member of the Indian Company Law Service (Accounts Branch) and is holding, or has held, a post in Senior Administrative Grade in that service for at least five years; or

(b) is, or has been, a Joint Secretary to the Government of India under the Central Staffing Scheme, or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India for at least five years and has adequate knowledge of, and experience in, dealing with problems relating to company law; or

(c) is, or has been, for at least fifteen years in practice as a chartered accountant under the Chartered Accountants Act, 1949; or

38 of 1949.

(d) is, or has been, for at least fifteen years in practice as a cost accountant under the Costs and Works Accountants Act, 1959; or

23 of 1959.

(e) is, or has been, for at least fifteen years working experience as a Secretary in whole-time practice as defined in clause (45A) of section 2 of this Act and is a member of the Institute of the Companies Secretaries of India constituted under the Company Secretaries Act, 1980;

56 of 1980.

(f) is a person of ability, integrity and standing having special knowledge of, and professional experience of not less than fifteen years in, science, technology, economics, banking, industry, law, matters relating to labour, industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in, which would be in the opinion of the Central Government useful to the Tribunal, or;

(g) is, or has been, a Presiding Officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947; or

14 of 1947.

(h) is a person having special knowledge of, and experience of not less than fifteen years in, the matters relating to labour.

Explanation.—For the purposes of this Part,—

(i) “Judicial Member” means a Member of the Tribunal appointed as such under sub-section (2) of section 10FD and includes the President of the Tribunal;

(ii) “Technical Member” means a Member of the Tribunal appointed as such under sub-section (3) of section 10FD.

10FE. The President and every other Member of the Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office:

Term of office
of President
and Members.

Provided that no President or other Member shall hold office as such after he has attained,—

(a) in the case of the President, the age of sixty-seven years;

(b) in the case of any other Member, the age of sixty-five years.

10FF. The President of the Tribunal shall exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government:

Financial and
administrative
powers of
President.

Provided that the President shall have authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any other officer of the Tribunal subject to the condition that such other Member or other officer shall, while exercising such delegated powers, continue to act under the direction, superintendence and control of the President.

10FG. The President of the Tribunal shall be paid such salary and allowances as are admissible, and the other terms and conditions of service applicable, to the Judge of a High Court in case a sitting High Court Judge is appointed as the President and in other cases, the salary and allowances and other terms and conditions of service of the President and Members of the Tribunal shall be such as may be prescribed:

Salary,
allowances,
and other
terms and
conditions of
service of
President,
Members, etc.

Provided that neither the salary and allowances nor the other terms and conditions of service of the President and other Members shall be varied to their disadvantage after their appointment.

10FH. (1) In the event of the occurrence of any vacancy in the office of the President of the Tribunal by reason of his death, resignation or otherwise, the senior-most Member shall act as the President of the Tribunal until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Vacancy in
Tribunal.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member or, as the case may be, such one of the Members of the Tribunal, as the Central Government, may, by notification, authorise in this behalf, shall discharge the functions of the President until the date on which the President resumes his duties.

(3) If, for reason other than temporary absence, any vacancy occurs in the office of the President or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

10FI. The President or a Member of the Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation of
President and
Member.

Provided that the President or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of the term of office, whichever is the earliest.

Removal and
suspension of
President or
Member.

10FJ. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the President or any Member of the Tribunal, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President or Member of the Tribunal; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member of the Tribunal; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that nothing contained in this section shall apply to the President of the Tribunal who is a Judge of a High Court:

Provided further that no such President or a Member shall be removed on any of the grounds specified in clauses (b) to (e) without giving him reasonable opportunity of being heard in respect of those charges.

(2) The President or a Member of the Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such President or a Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the President or Member of the Tribunal in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the President or a Member referred to in sub-section (2).

Officers and
employees of
Tribunal.

10FK. (1) The Central Government shall provide the Tribunal with such officers and other employees as it may deem fit.

(2) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the President or the Member, as the case may be.

(3) The salaries and allowances and other terms and conditions of service of the officers and other employees of the Tribunal shall be such as may be prescribed.

Benches of
Tribunal.

10FL. (1) Subject to the provisions of this section, the powers of the Tribunal may be exercised by Benches, constituted by the President of the Tribunal, out of which one shall be a Judicial Member and another shall be a Technical Member referred to in clauses (a) to (f) of sub-section (3) of section 10FD:

Provided that it shall be competent for the Members authorised in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President of the Tribunal may, by general or special order, specify:

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member of the Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President of the Tribunal or, as the case may be, referred to him for transfer to such Bench as the President may deem fit.

(2) The President of the Tribunal shall, for the disposal of any case relating to rehabilitation, restructuring or winding up of the companies, constitute at least ten Special Benches consisting of three or more Members, each of whom shall necessarily be a Judicial Member, a Technical Member appointed under any of the clauses (a) to (f) of sub-section (3) of section 10FD, and a Member appointed under clause (g) or clause (h) of sub-section (3) of section 10FD.

(3) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members of the Tribunal who have heard the case, including those who first heard it.

(4) There shall be constituted, such number of Benches, as may be notified by the Central Government.

(5) In addition to the other Benches, there shall be a Principal Bench at New Delhi presided over by the President of the Tribunal.

(6) Every other Bench or Special Bench shall be presided over by a Judicial Member.

(7) The Principal Bench of the Tribunal shall have powers of transfer of proceedings from any Bench to another Bench of the Tribunal in the event of inability of any Bench from hearing any such proceedings for any reason:

Provided that no transfer of any proceedings shall be made under this sub-section except after recording the reasons for so doing in writing.

10FM. (1) The Tribunal may, after giving the parties to any proceeding before it, an opportunity of being heard, pass such orders thereon as it thinks fit.

Order of
Tribunal.

(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the parties.

(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

10FN. The Tribunal shall have power to review its own orders.

Power to review.

10FO. The Tribunal may, by general or special order, delegate, subject to such conditions and limitations, if any, as may be specified in the order, to any Member or officer or other employee of the Tribunal or other person authorised by the Tribunal to manage any industrial company or industrial undertaking or any operating agency, such powers and duties under this Act as it may deem necessary.

Delegation of
powers.

10FP. (1) The Tribunal or any operating agency, on being directed by the Tribunal may, in order to take into custody or under its control all property, effects and actionable claims to which a sick industrial company is or appears to be entitled, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any property, books of account or any other document of such sick industrial company, be situate or be found, to take possession thereof, and the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, shall, on such request being made to him,—

Power to seek
assistance of
Chief
Metropolitan
Magistrate and
District
Magistrate

(a) take possession of such property, books of account or other documents;
and

(b) cause the same to be entrusted to the Tribunal or the operating agency.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

PART IC

APPELLATE TRIBUNAL

Appeal from
order of
Tribunal.

10FQ. (1) Any person aggrieved by an order or decision of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) No appeal shall lie to the Appellate Tribunal from an order or decision made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision made by the Tribunal is received by the appellant and it shall be in such form and accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from not filing the appeal in time.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Tribunal shall, after giving parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and parties to the appeal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of the receipt of the appeal.

Constitution of
Appellate
Tribunal.

10FR. (1) The Central Government shall, by notification in the Official Gazette, constitute with effect from such date as may be specified therein, an Appellate Tribunal to be called the "National Company Law Appellate Tribunal" consisting of a Chairperson and not more than two Members, to be appointed by that Government, for hearing appeals against the orders of the Tribunal under this Act.

(2) The Chairperson of the Appellate Tribunal shall be a person who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court.

(3) A Member of the Appellate Tribunal shall be a person who is qualified for appointment as a Judicial Member under sub-section (2) of section FD and the other Member shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty years in, science, technology, economics, banking, industry, law, matters relating to labour, industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in which, would be in the opinion of the Central Government useful to the Appellate Tribunal.

Vacancy in
Appellate
Tribunal, etc.

10FS. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member or, as the case may be, such one of the Member of the Appellate Tribunal, as the Central

Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

(3) If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

10FT. The Chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of three years:

Term of office of Chairperson and Members.

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of seventy years;

(b) in the case of any other Member, the age of sixty-seven years.

10FU. The Chairperson or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation of Chairperson and Members.

Provided that the Chairperson or a Member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

10FV. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any Member of the Appellate Tribunal, who—

Removal and suspension of Chairperson and Members of Appellate Tribunal.

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such Chairperson or Member of the Appellate Tribunal; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that nothing contained in this section shall apply to the Chairperson or a Member who at the time of his appointment, is a sitting Judge of the Supreme Court or the Chief Justice of a High Court or a Judge of a High Court.

(2) The Chairperson or a Member of the Appellate Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the Chairperson or a Member of the Appellate Tribunal in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson or a Member referred to in sub-section (2).

Salary, allowances and other terms and conditions of service of Chairperson and Members.

10FW. (1) There shall be paid to the Chairperson of the Appellate Tribunal a salary, which is equal to the salary of a Judge of the Supreme Court.

(2) There shall be paid to a Member of the Appellate Tribunal a salary, which is equal to the salary of a Judge of a High Court.

(3) The other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal, including travelling allowances, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be prescribed.

(4) The salary, allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall not be varied to their disadvantage after appointment.

Selection Committee.

10FX. (1) The Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of—

- | | |
|--|--------------|
| (a) Chief Justice of India | Chairperson; |
| (b) Secretary in the Ministry of Finance | Member; |
| (c) Secretary in the Ministry of Labour | Member; |
| (d) Secretary in the Ministry
of Law, Justice and Company Affairs
(Department of Legal Affairs or
Legislative Department) | Member; |
| (e) Secretary in the Ministry of Law,
Justice and Company Affairs
(Department of Company Affairs) | Member. |

(2) The Joint Secretary-in-charge of the Ministry or Department of the Central Government dealing with this Act shall be the Convenor of the Selection Committee.

(3) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal and six months before the superannuation or end of tenure of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, make a reference to the Selection Committee for filling up of the vacancy.

(4) The Selection Committee shall recommend within one month a panel of three names for every vacancy referred to it.

(5) Before recommending any person for appointment as the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, the Selection Committee shall satisfy itself that such person does not have financial or other interest which is likely to affect prejudicially his functions as the Chairman or a member.

(6) No appointment of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

Chairperson, etc., to be public servants.

Protection of action taken in good faith

10FY. The Chairperson, Members, officers and other employees of the Appellate Tribunal and the President, Members, officers and other employees of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

10FZ. No suit, prosecution or other legal proceedings shall lie against the Appellate Tribunal or its Chairperson, Member, officer or other employee or against the Tribunal, its President, Member, officer or other employee or operating agency or liquidator or any other person authorised by the Appellate Tribunal or the Tribunal in the discharge of any function

under this Act for any loss or damage caused or likely to be caused by any action which is in good faith done or intended to be done in pursuance of this Act.

5 of 1908.

10FZA. (1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

Procedure and powers of Tribunal and Appellate Tribunal.

5 of 1908.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

1 of 1872.

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(i) any other matter which may be prescribed by the Central Government.

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situate; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

45 of 1860.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Tribunal and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

70 of 1971.

10G. The Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise, for this purpose under the provisions of the Contempt of Courts Act, 1971, shall have the effect subject to modifications that—

Power to punish for contempt.

(a) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal;

(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such law officers as the Central Government may specify in this behalf.

Staff of
Appellate
Tribunal.

10GA. (1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.

Civil court
not to have
jurisdiction.

10GB. (1) No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force.

70 of 1971.

Vacancy in
Tribunal or
Appellate
Tribunal not to
invalidate acts
or proceedings.

10GC. No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the establishment of the Tribunal or the Appellate Tribunal, as the case may be.

Right to legal
representation.

10GD. The applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.

Explanation.— For the purposes of this section,—

(a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

38 of 1949.

(b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Companies Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980.

(c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

23 of 1959.

(d) “legal practitioner” means an advocate, a vakil or any attorney of any High Court, and includes a pleader in practice.

Limitation.

10GE. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to the Appellate Tribunal.

36 of 1963.

Appeal to
Supreme
Court.

10GF. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such decision or order :

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.’

7. For section 17 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 17.

“17. (1) A company may, by special resolution, alter the provisions of its memorandum so as to change the place of its registered office from one State to another, or with respect to the objects of the company so far as may be required to enable it—

Special resolution and confirmation by Tribunal required for alteration of memorandum.

(a) to carry on its business more economically or more efficiently;

(b) to attain its main purpose by new or improved means;

(c) to enlarge or change the local area of its operations;

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;

(e) to restrict or abandon any of the objects specified in the memorandum;

(f) to sell or dispose of the whole or any part of the undertaking, or of any of the undertakings, of the company; or

(g) to amalgamate with any other company or body of persons.

(2) The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Tribunal on petition.

(3) Before confirming the alteration, the Tribunal must be satisfied—

(a) that sufficient notice has been given to every holder of the debentures of the company, and to every other person or class of persons whose interests will, in the opinion of the Tribunal, be affected by the alteration; and

(b) that, with respect to every creditor who, in the opinion of the Tribunal, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Tribunal, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the Tribunal:

Provided that the Tribunal may, in the case of any person or class of persons, for special reasons, dispense with the notice required by clause (a).

(4) The Tribunal shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity to appear before the Tribunal and state his objections and suggestions, if any, with respect to the confirmation of the alteration.

(5) The Tribunal may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper.

(6) The Tribunal shall, in exercising its powers under this section, have regard to the rights and interests of the members of the company and of every class of them, as well as to the rights and interests of the creditors of the company and of every class of them.

(7) The Tribunal may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Tribunal for the purchase of the interests of dissentient members; and may give such directions and make such orders as it thinks fit for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company may be expended for any such purchase.”.

Amendment of
sections 18,
19, 43, 49,
55A and 58A

8. In sections 18, 19, 43, 49, 55A and 58A of the principal Act, for the words “Company Law Board”, wherever they occur, the word “Tribunal” shall be substituted.

Amendment of
section 58AA.

9. In section 58AA of the principal Act,—

(a) for the words “Company Law Board”, wherever they occur, the word “Tribunal” shall be substituted;

(b) in sub-section (3), in the first proviso, for the words “the Board”, the words “the Tribunal” shall be substituted.

Amendment of
section 75.

10. In section 75 of the principal Act, in sub-section (1), in clause (c), in sub-clause (ii), for the word “Court”, the word “Tribunal” shall be substituted.

Amendment of
section 79

11. In section 79 of the principal Act,—

(a) for the words “Company Law Board”, wherever they occur, the word “Tribunal” shall be substituted;

(b) in sub-section (2), in clause (ii), in the proviso, for the words “unless that Board is of opinion”, the words “unless the Tribunal is of opinion” shall be substituted.

Amendment of
section 80A.

12. In section 80A of the principal Act,—

(a) in sub-section (1), in the proviso, for the words “Company Law Board”, the word “Tribunal” shall be substituted;

(b) in sub-section (2), for the words “any court”, the words “any court or the Tribunal” shall be substituted.

Amendment
of section 104.

13. In section 104 of the principal Act, in sub-section (1), in the proviso, in clause (b), for the words “the Court”, the words “the Tribunal” shall be substituted.

Amendment of
sections 111,
111A, 113,
117B, 117C
and 118.

14. In sections 111, 111A, 113, 117B, 117C and 118 of the principal Act, for the words “Company Law Board”, wherever they occur, the word “Tribunal” shall be substituted.

Substitution of
new section
for section
141.

15. For section 141 of the principal Act, the following section shall be substituted, namely:—

Rectification
by Tribunal of
register of
charges.

“141. (1) The Tribunal, on being satisfied—

(a) that the omission to file with the Registrar the particulars of any charge created by a company or of any charge subject to which any property has been acquired by the company or of any modification of any such charge or of any issue of debentures of a series, or that the omission to register any charge within the time required by this Part or that the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required by this Part, or that the omission or mis-statement of any particular with respect to any such charge, modification or issue of debentures of a series or with respect to any memorandum of satisfaction or other entry made in pursuance of section 138 or section 139, was accidental or due to inadvertence or to some other

sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company; or

(b) that on other grounds it is just and equitable to grant relief;

may, on the application of the company or any person interested and on such terms and conditions as seem to the Tribunal just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.

(2) The Tribunal may make such order as to the costs of an application under sub-section (1) as it thinks fit.

(3) Where the Tribunal extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered."

16. In sections 144 and 163 of the principal Act, for the words "Company Law Board", the word "Tribunal" shall be substituted.

Amendment of sections 144 and 163

17. For section 167 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 167.

"167. (1) If default is made in holding an annual general meeting in accordance with section 166, the Tribunal may, notwithstanding anything contained in this Act or in the articles of the company, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient in relation to the calling, holding and conducting of the meeting.

Power of Tribunal to call annual general meeting

Explanation.—The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company."

18. In section 168 of the principal Act, for the words "Central Government", the word "Tribunal" shall be substituted.

Amendment of section 168.

19. For section 186 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 186.

"186. (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles, the Tribunal may, either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled to vote at the meeting,—

Power of Tribunal to order meeting to be called.

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the

calling, holding and conducting of the meeting, the operation of the provisions of this Act and of the company's articles.

Explanation.—The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.”.

Amendment
of sections
188 and 196.

20. In sections 188 and 196 of the principal Act, for the words “Company Law Board” wherever they occur, the word “Tribunal” shall be substituted.

Amendment
of section 203.

21. In section 203 of the principal Act,—

(a) in sub-section (1), for the word “Court”, at both the places where it occurs, the words “Court or the Tribunal, as the case may be” shall be substituted;

(b) in sub-section (2),—

(i) in clause (a), for the words “includes the Court by which he is convicted as well as any Court having jurisdiction to wind up”, the words “includes the Court or the Tribunal by which he is convicted, as well as any Court or Tribunal having jurisdiction to wind up” shall be substituted;

(ii) in clause (b), for the word “Court”, the words “Court or Tribunal” shall be substituted;

(c) in sub-sections (3) and (4), for the words “Court having jurisdiction to wind up a company”, the words “Court or the Tribunal having jurisdiction to wind up a company” shall be substituted;

(d) in sub-section (5), for the words “attention of the Court”, the words “attention of the Court or the Tribunal, as the case may be,” shall be substituted.

Amendment
of sections
219, 225, 235,
236, 237 and
241.

22. In sections 219, 225, 235, 236, 237 and 241 of the principal Act, for the words “Company Law Board”, wherever they occur, the word “Tribunal” shall be substituted.

Amendment
of section 243.

23. In section 243 of the principal Act, for the word “Court”, at both the places where it occurs, the word “Tribunal” shall be substituted.

Amendment
of sections
247, 250, 251,
269, 284, 304
and 307.

24. In sections 247, 250, 251, 269, 284, 304 and 307 of the principal Act, for the words “Company Law Board”, wherever they occur, the word “Tribunal” shall be substituted.

Amendment
of section 318.

25. In section 318 of the principal Act, in sub-section (3), in clause (d), for the words “or subject to the supervision of Court”, the words “order of the Tribunal” shall be substituted.

Amendment
of Chapter
IVA of Part
VI.

26. In Part VI of the principal Act, in Chapter IVA, for the words “Company Law Board”, wherever they occur, the word “Tribunal” shall be substituted.

Amendment
of section 391.

27. In section 391 of the principal Act,—

(a) for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted;

(b) sub-section (7) shall be omitted;

(c) below sub-section (7), the portion beginning with the words "The provisions of" and ending with the words "the application" shall be omitted.

28. For section 392 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 392.

"392. (1) Where the Tribunal makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it—

Power of Tribunal to enforce compromise and arrangement.

(a) shall have power to supervise the carrying out of the compromise or an arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of the Companies (Amendment) Act, 2001 sanctioning a compromise or an arrangement."

29. In section 394 of the principal Act,—

Amendment of section 394

(a) for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted;

(b) in the first proviso to sub-section (1), the words "the Company Law Board or" shall be omitted.

30. In sections 394A and 395 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

Amendment of sections 394A and 395.

31. In section 396 of the principal Act, for the words "Company Law Board", at both the places where they occur, the word "Tribunal" shall be substituted.

Amendment of section 396.

32. In Part VI of the principal Act, in Chapter VI, for the words "Company Law Board", wherever they occur, the word "Tribunal" shall be substituted.

Amendment of Chapter VI of Part VI.

33. In section 410 of the principal Act,—

Amendment of section 410.

(a) for the words "Company Law Board", the word "Tribunal" shall be substituted;

(b) for the words "or Board", the words "or the Tribunal" shall be substituted.

34. For section 424 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 424.

"424. The provisions of sections 421 to 423 shall apply to the receiver of, or any person appointed to manage, the property of a company, appointed by the Tribunal or to any person appointed to manage, the property of a company under any powers contained in an instrument, in like manner as they apply to a receiver appointed under any powers contained in an instrument."

Application of sections 421 to 423 to receivers and managers appointed by Tribunal and managers appointed in pursuance of an instrument.

insertion of
new Part VIA.

35. After Part VI of the principal Act, the following Part shall be inserted, namely:—

‘PART VIA

REVIVAL AND REHABILITATION OF SICK INDUSTRIAL COMPANIES

Reference to
Tribunal.

424A. (1) Where an industrial company, has become a sick industrial company, the Board of directors of such company shall make a reference to the Tribunal and prepare a scheme of its revival and rehabilitation and submit the same to the Tribunal along with an application containing such particulars as may be prescribed for determination of the measures which may be adopted with respect to such company:

Provided that nothing contained in this sub-section shall apply to a Government company:

Provided further that a Government company may, with the prior approval of the Central Government or a State Government, as the case may be, make a reference to the Tribunal in accordance with the provisions of this sub-section and thereafter all the provisions of this Act shall apply to such Government company.

(2) The application under sub-section (1) shall be accompanied by a certificate from an auditor from a panel of auditors prepared by the Tribunal indicating—

(a) the reasons of the net worth of such company being less than fifty per cent.; or

(b) the default in repayment of its debt making such company a sick industrial company,

as the case may be.

(3) Without prejudice to the provisions of sub-section (1), the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company:

Provided that a reference shall not be made under this sub-section in respect of any industrial company by—

(a) the Government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State;

(b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.

(4) A reference under sub-section (1) or sub-section (3) shall be made to the Tribunal within a period of one hundred and eighty days from the date on which the Board of directors of the company or the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank, as the case may be, come to know, of the relevant facts giving rise to causes of such reference:

Provided that the Tribunal may extend the said period by another ninety days for reasons to be recorded in writing for such extension.

(5) The Tribunal may, on receipt of a reference under sub-section (1), pass an order as to whether a company in respect of which a reference has been made has become a sick industrial company and such order shall be final.

Inquiry into
working of
sick industrial
companies.

424B. (1) The Tribunal may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company—

(a) upon receipt of a reference with respect to such company under section 424A; or

(b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.

(2) The Tribunal may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (1), require by order any operating agency to enquire into the scheme for revival and make a report with respect to such matters as may be specified in the order.

(3) The operating agency shall complete its inquiry as expeditiously as possible and submit its report to the Tribunal within twenty-one days from the date of such order:

Provided that the Tribunal may extend the said period to forty days for reasons to be recorded in writing for such extension.

(4) The Tribunal shall conclude its enquiry as expeditiously as possible and pass final orders in the proceedings within sixty days from the commencement of the inquiry:

Provided that the Tribunal may extend the said period to ninety days for reasons to be recorded in writing for such extension.

Explanation—For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Tribunal of any reference or information or upon its own knowledge reduced to writing by the Tribunal.

(5) Where the Tribunal deems it fit to make an enquiry or to cause an inquiry to be made into any industrial company under sub-section (1) or, as the case may be, under sub-section (2), it may appoint one or more persons who possess knowledge, experience and expertise in management and control of the affairs of any other company to be a special director or special directors on the board of such industrial company for safeguarding its financial and other interests or in the public interest.

(6) The special director or special directors appointed under sub-section (5) shall submit a report to the Tribunal within sixty days from the commencement of the inquiry, about the state of affairs of the company in respect of which reference has been made under sub-section (1) and such special director or directors shall have all the powers of a director of a company under this Act, necessary for discharge of his or their duties.

(7) The Tribunal may issue such directions to a special director appointed under sub-section (5) as it may deem necessary or expedient for proper discharge of his duties.

(8) The appointment of a special director referred to in sub-section (5) shall be valid and effective notwithstanding anything to the contrary contained in any other provision of this Act or in any other law for the time being in force or in the memorandum and articles of association or any other instrument relating to the industrial company, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any special director or directors appointed by the Tribunal.

(9) Any special director appointed under sub-section (5), shall—

(a) hold office during the pleasure of the Tribunal and may be removed or substituted by any person by order of the Tribunal;

(b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement;

(d) not be liable to be prosecuted under any law for anything done or omitted to be done in good faith in the discharge of his duties in relation to the sick industrial company.

Powers of
Tribunal to
make suitable
order on
completion of
inquiry.

424C. (1) If after making an inquiry under section 424 B, the Tribunal is satisfied that a Company has become a sick industrial company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make its net worth exceed the accumulated losses or make the repayment of its debt referred to in clause (b) of sub-section (2) of section 424A within a reasonable time.

(2) If the Tribunal decides under sub-section (1) that it is practicable for a sick industrial company to make its net worth exceed the accumulated losses or pay its debt referred to in that sub-section within a reasonable time, the Tribunal shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make its net worth exceed the accumulated losses or make repayment of the debt.

(3) If the Tribunal decides under sub-section (1) that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses or make the repayment of its debts referred to in clause (b) of sub-section (2) of section 424A, within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 424D in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company.

(4) The Tribunal may,—

(a) if any of the restrictions or conditions specified in an order made under sub-section (2) are not complied with by the company concerned, or if the company fails to revive in pursuance of the said order, review such order on a reference in that behalf from any agency referred to in sub-section (3) of section 424A or on its own motion and pass a fresh order in respect of such company under sub-section (3);

(b) if the operating agency specified in an order made under sub-section (3) makes a submission in that behalf, review such order and modify the order in such manner as it may deem appropriate.

Preparation
and sanction
of schemes

424D. (1) Where an order is made under sub-section (3) of section 424C in relation to any sick industrial company, the operating agency specified in the order shall prepare as expeditiously as possible and ordinarily within a period of sixty days from the date of such order, having regard to the guidelines framed by the Reserve Bank of India in this behalf, a scheme with respect to such company providing for any one or more of the following measures, namely:—

(a) the financial reconstruction of such industrial company;

(b) the proper management of such industrial company by change in, or take over of, the management of such industrial company;

(c) the amalgamation of—

(i) such industrial company with any other company; or

(ii) any other company with such industrial company (hereafter in this section, in the case of sub-clause (i), the other company, and in the case of sub-clause (ii), such industrial company, referred to as “transferee-company”);

(d) the sale or lease of a part or whole of any industrial undertaking of such industrial company;

(e) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;

(f) such other preventive ameliorative and remedial measures as may be appropriate;

(g) repayment of debt;

(h) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (g):

Provided that the Tribunal may extend the said period of sixty days to ninety days for reasons to be recorded in writing for such extension.

(2) The scheme referred to in sub-section (1) may provide for any one or more of the following, namely:—

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the transferee company;

(b) the transfer to the transferee company of the business, properties, assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme;

(c) any change in the Board of directors, or the appointment of a new Board of directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of directors or of any director, the period for which such appointment shall be made;

(d) the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the transferee company for the purpose of altering the capital structure thereof, or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(e) the continuation by or against the sick industrial company or, as the case may be, the transferee company of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section (3) of section 424C;

(f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Tribunal considers necessary in the interests of the reconstruction, revival or rehabilitation or repayment of debts of such sick industrial company or for the maintenance of the business of such industrial company;

(g) the allotment to the shareholders of the sick industrial company, of shares in such company or, as the case may be, in the transferee company and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder, the payment of cash to those shareholders in full satisfaction of their claims—

(i) in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

(h) any other terms and conditions for the reconstruction or amalgamation of the sick industrial company;

(i) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified, to any person, including a co-operative society formed by the employees of such undertaking and fixing of reserve price for such sale;

(j) lease of the industrial undertaking of the sick industrial company to any person, including a co-operative society formed by the employees of such undertaking;

(k) method of sale of assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;

(l) issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of such sick industrial company;

(m) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

(3)(a) The scheme prepared by the operating agency shall be examined by the Tribunal and a copy of the scheme with modification, if any, made by the Tribunal shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Tribunal may publish or cause to be published the draft scheme in brief in such daily newspapers as the Tribunal may consider necessary, for suggestions and objections, if any, within such period as the Tribunal may specify:

Provided that the Tribunal may extend the said period of sixty days specified in sub-section (1) to ninety days for reasons to be recorded in writing for such extension.

(b) The complete draft scheme shall be kept at the place where registered office of the company is situated or at such places as mentioned in the advertisement.

(c) The Tribunal may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick industrial company and the operating agency and also from the transferee company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies:

Provided that where the scheme relates to amalgamation, the said scheme shall be laid before the company other than the sick industrial company in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of the transferee company.

(4) The scheme may thereafter be sanctioned, within sixty days by the Tribunal (hereinafter referred to as the sanctioned scheme) and shall come into force on such date as the Tribunal may specify in this behalf:

Provided that the Tribunal may extend the said period of sixty days to ninety days for reasons to be recorded in writing for such extension:

Provided further that different dates may be specified for different provisions of the scheme.

(5) The Tribunal may, on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines including the guidelines framed by the Reserve Bank of India in this behalf in order to prepare a fresh scheme providing for such measures as the operating agency may consider necessary.

(6) When a fresh scheme is prepared under sub-section (5), the provisions of sub-sections (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).

(7) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.

(8) The sanction accorded by the Tribunal under sub-section (4) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Tribunal to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise), be admitted as evidence.

(9) A copy of the sanctioned scheme referred to in sub-section (8) shall be filed with the Registrar within the prescribed time by the company in respect of which such scheme relates.

(10) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.

(11) The creditors of a sick industrial company may also prepare a scheme for revival or rehabilitation of such sick industrial company and submit the same to the Tribunal for its sanction:

Provided that no scheme shall be submitted by the creditors to the Tribunal unless such scheme has been approved by atleast two-third creditors of the sick industrial company.

(12) All the provisions relating to the preparation of scheme by the operating agency and sanction of such scheme by the Tribunal shall, as far as may be, apply to the scheme referred to in sub-section (11)".

(13) The scheme referred to in sub-section (11) if sanctioned by the Tribunal shall be binding on all the creditors and on other concerned.

(14) If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Tribunal may, on the recommendation of the operating agency or otherwise, by order, do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(15) The Tribunal may, if it deems necessary or expedient so to do, by order in writing, direct any operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to the sick industrial company as may be specified in the order.

(16) Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Tribunal may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of this Act.

(17) The Tribunal may monitor periodically the implementation of the sanctioned scheme.

Rehabilitation
by giving
financial
assistance.

424E. (1) Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to the sick industrial company, the scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority (any Government, bank, institution or other authority required by a scheme to provide for such financial assistance being hereafter in this section referred to as the person required by the scheme to provide financial assistance) to the sick industrial company.

(2) Every scheme referred to in sub-section (1) shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation or within such further period, not exceeding sixty days, as may be allowed by the Tribunal, and if no consent is received within such period or further period, it shall be deemed that consent has been given.

(3) Where in respect of any scheme the consent referred to in sub-section (2) is given by every person required by the scheme to provide financial assistance, the Tribunal may, as soon as may be, sanction the scheme and on and from the date of such sanction the scheme shall be binding on all concerned.

(4) On the sanction of the scheme under sub-section (3), the financial institutions and the banks required to provide financial assistance, shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial assistance by way of loans or advances or guarantees or reliefs or concessions or sacrifices agreed to be provided or granted under the scheme on behalf of all financial institutions and banks concerned.

(5) The financial institution and the bank designated under sub-section (4) shall forthwith proceed to release the financial assistance to the sick industrial company in fulfillment of the requirement in this regard.

(6) Where in respect of any scheme consent under sub-section (2) is not given by any person required by the scheme to provide financial assistance, the Tribunal may adopt such other measures, including the winding up of the sick industrial company, as it may deem fit.

Arrangement
for continuing
operations,
etc., during
inquiry.

424F. (1) At any time before completion of the inquiry under section 424B, the sick industrial company or the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank or any other institution, bank or authority providing or intending to provide any financial assistance by way of loans or advances or guarantees or reliefs, or concessions to such industrial company may make an application to the Tribunal—

(a) agreeing to an arrangement for continuing the operations of the sick industrial company; or

(b) suggesting a scheme for the financial reconstruction of the sick industrial company.

(2) The Tribunal may, within sixty days of the receipt of the application under sub-section (1), pass such orders thereon as it may deem fit.

Winding up of
sick industrial
company.

424G. (1) Where the Tribunal, after making inquiry under section 424B and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of the opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record its findings and order winding up of the company.

(2) For the purpose of winding up of the sick industrial company, the Tribunal may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of such industrial company and the officer so appointed shall for the purpose of the winding-up of such sick industrial company be deemed to be, and have all the powers of, the official liquidator under this Act.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and pass orders for distribution in accordance with the provisions of section 529A, and other provisions of this Act.

(4) Without prejudice to the other provisions contained in this Act, the winding up of a company shall, as far as may be, concluded within one year from the date of the order made under sub-section (1).

424H. Where for the proper discharge of the functions of the Tribunal under this Part, the circumstances so require, the Tribunal may, through any operating agency, cause to be prepared—

Operating agency to prepare complete inventory, etc.

(a) with respect to a company a complete inventory of—

(i) all assets and liabilities of whatever nature;

(ii) all books of account, registers, maps, plans, records, documents of title or ownership of property and all other documents of whatever nature relating thereto;

(b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors;

(c) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of a part or whole of the industrial undertaking of the company or for fixation of the lease rent or share exchange ratio;

(d) an estimate of reserve price, lease rent or share exchange ratio;

(e) proforma accounts, where no up-to-date audited accounts are available.

424I. The Tribunal may, if it is of opinion, that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order, direct such company not to dispose of, except with the prior approval of the Tribunal, any of its assets during the period of preparation or consideration of the scheme under section 424C.

Direction not to dispose of assets.

424J. On receipt of reference under section 424A, the Tribunal may call for any periodic information from the company as to the steps taken by the company to make its net worth exceed the accumulated losses or to make repayment of its debts referred to in that section, as the case may be, and the company shall furnish such information.

Power of Tribunal to call for periodic information.

424K. (1) If, in the course of scrutiny or implementation of any scheme or proposal, it appears to the Tribunal that any person who has taken part in the promotion, formation or management of the sick industrial company or its undertaking, including any past or present director, manager or officer or employee of the sick industrial company—

Misfeasance proceedings.

(a) has misapplied or retained, or become liable or accountable for, any money or property of the sick industrial company; or

(b) has been guilty of any misfeasance, malfeasance or non-feasance of breach of trust in relation to the sick industrial company,

the Tribunal may, by order, direct him to repay or restore the money or property or any part thereof, with or without interest, as it thinks just, or to contribute such sum to

the assets of the sick industrial company or the other person, entitled thereto by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Tribunal thinks just, and also report the matter to the Central Government for any other action which that Government may deem fit.

(2) If the Tribunal is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick industrial company, that such person by himself or alongwith others had diverted the funds or other property of such company for any purpose other than a *bona fide* purpose of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall by order, direct the public financial institutions, scheduled banks and State level institutions not to provide, during a period of ten years from the date of the order, any financial assistance to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director (by whatever name called).

(3) No order shall be made by the Tribunal under this section against any person unless such person has been given an opportunity for making his submissions.

(4) This section shall apply notwithstanding that the matter is one for which the person may be criminally liable.

Penalty for
certain
offences.

424L. (1) Whoever violates provisions of this Part or any scheme, or any order, of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence to the Tribunal or the Appellate Tribunal, and attempts to tamper the records of reference or appeal filed under this Act, shall be punishable with simple imprisonment for a term which may extend to three years or shall be liable to fine not exceeding ten lakhs rupees.

(2) No court shall take cognizance of any offence under sub-section (1) except on a complaint in writing of an officer of the Tribunal or the Appellate Tribunal or any officer of the Central Government authorised by it or any officer of an operating agency as may be authorised in this behalf by the Tribunal or the Appellate Tribunal, as the case may be.

Amendment of
section 425

36. In section 425 of the principal Act, in sub-section (1),—

- (i) in clause (a), for the word "Court", the word "Tribunal" shall be substituted;
- (ii) in clause (b), the word "or" occurring at the end shall be omitted.
- (iii) clause (c) shall be omitted.

Amendment of
sections 426
and 427.

37. In sections 426 and 427 of the principal Act, for the word "Court", the word "Tribunal" shall be substituted.

Amendment of
heading and
sub-heading
before section
433.

38. In the heading and sub-heading before section 433 of the principal Act, for the word "Court", the word "Tribunal" shall be substituted.

Substitution of
new section for
section 433.

39. For section 433 of the principal Act, the following section shall be substituted, namely:—

Circumstances
in which
company may
be wound up
by Tribunal.

"433. A company may be wound up by the Tribunal, —

(a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;

(e) if the company is unable to pay its debts;

(f) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up;

(g) if the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years;

(h) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(i) if the Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 424G:

Provided that the Tribunal shall make an order for winding up of a company under clause (h) on application made by the Central Government or a State Government."

40. In section 434 of the principal Act, in sub-section (1),—

Amendment of section 434.

(i) in clause (a), for the words "five hundred rupees", the words "one lakh rupees" shall be substituted;

(ii) in clause (b), for the words "any Court", the words "any Court or Tribunal" shall be substituted;

(iii) in clause (c), for the word "Court", at both the places where it occurs, the word "Tribunal" shall be substituted.

41. Heading occurring before section 435 and sections 435 to 438 of the principal Act shall be omitted.

Omission of heading before sections 435 and sections 435 to 438.

42. In section 439 of the principal Act,—

Amendment of section 439.

(i) for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted;

(ii) in sub-section (1), after clause (f), the following clause shall be inserted, namely:—

(g) in a case falling under clause (h) of section 433, by the Central Government or a State Government;

(iii) in sub-section (5), for the word, brackets and letter "and (f)", the brackets, letters and word "(f) and (g)" shall be substituted.

43. After section 439 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 439A.

"439A. (1) Every company shall file with the Tribunal a statement of its affairs alongwith the petition for winding up.

Statement of affairs to be filed on winding up of a company.

(2) Where a company opposes a petition for its winding up, it shall file with the Tribunal a statement of its affairs.

(3) The statement of affairs referred to in sub-section (1) or sub-section (2) shall be accompanied by —

(a) the last known addresses of all directors and company secretary of such company;

(b) the details of location of assets of the company and their value;

(c) the details of all debtors and creditors with their complete addresses;

(d) such other details as the Tribunal may direct.”.

Substitution of new sections for sections 440 and 441.

44. For sections 440 and 441 of the principal Act, the following sections shall be substituted, namely:—

Right to present winding up petition where company is being wound up voluntarily.

“440. (1) Where a company is being wound up voluntarily, a petition for its winding up by the Tribunal may be presented by —

(a) any person authorised to do so under section 439; or

(b) the Official Liquidator.

(2) The Tribunal shall not make a winding up order on a petition presented to it under sub-section (1), unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories or both.

Commencement of winding up by Tribunal.

441. (1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.”.

Insertion of new sections 441A, 441B, 441C, 441D, 441E and 441F.

45. After section 441 of the principal Act, the following shall be inserted, namely:—

Levy by way of cess and formation of Rehabilitation and Revival Fund

Levy and collection of cess on turnover or gross receipts of companies.

441A. (1) There shall be levied and collected, for the purposes of rehabilitation or revival or protection of assets of the sick industrial company, a levy by way of cess at such rate not less than 0.005 per cent. and not more than 0.1 per cent. on the value of annual turnover of every company or its annual gross receipt, whichever is more as the Central Government may, from time to time, specify by notification in the Official Gazette.

(2) Every company shall pay to the Central Government the cess referred to in sub-section (1) within three months from the close of every financial year.

(3) Every company shall furnish, in such form as may be prescribed, to the Central Government and the Tribunal the details of its turnover and gross receipts with payment of cess under sub-section (1).

Crediting proceeds of cess to Consolidated Fund of India.

441B. The proceeds of the cess levied and collected under section 441A shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Tribunal, from time to time, out of such proceeds (after deducting the cost of collection), such sums of money as it may think fit for being utilised for the purposes of the Fund.

Rehabilitation Fund.

441C. (1) There shall be formed for the purposes of rehabilitation or revival or protection of assets of a sick industrial company, a Fund to be called the Rehabilitation and Revival Fund.

(2) There shall be credited to the Fund —

(a) all amounts paid under section 441B;

(b) any amount given as grants by the Central Government for the purposes of this Fund;

(c) any amount given to the Fund from any other source;

(d) any income from investment of the amount in the Fund.

441D. The Fund shall be applied by the Tribunal for the purpose of—

Application of Fund.

(a) making interim payment of workmen's dues pending the revival or rehabilitation of the sick industrial company; or

(b) payment of workmen's dues due to the workmen, referred to in sub-section (3) of section 529, of the sick industrial company, or

(c) protection of assets of sick industrial company; or

(d) revival or rehabilitation of sick industrial company;

which in the opinion of the Tribunal are necessary or expedient for the said purposes.

441E. The Central Government or Tribunal may require any company to furnish for the purposes of rehabilitation or revival or protection of assets of sick industrial companies, such statistical and other information in such form and within such period as may be prescribed.

Power to call for information.

441F. (1) If any cess payable by a company under section 441A is not paid in accordance with the provisions of that section, it shall be deemed to be in arrears and the same shall be recovered by the Tribunal in such manner as may be prescribed.

Penalty for non-payment of cess.

(2) The Tribunal may, after such inquiry as it deems fit, impose on the company, which is in arrears under sub-section (1), a penalty not exceeding ten times the amount in arrears :

Provided that before imposing such penalty, such company shall be given a reasonable opportunity of being heard, and if, after such hearing, the Tribunal is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this sub-section."

46. In the heading before section 442, for the word "Court", the word "Tribunal" shall be substituted.

Amendment of heading before section 442.

47. Section 442 of the principal Act shall be omitted.

Omission of section 442.

48. For sections 443 and 444 of the principal Act, the following sections shall be substituted, namely :—

Substitution of new sections for sections 443 and 444.

"443. (1) On hearing a winding up petition, the Tribunal may —

Power of Tribunal on hearing petition.

(a) dismiss it, with or without costs; or

(b) adjourn the hearing conditionally or unconditionally; or

(c) make any interim order that it thinks fit; or

(d) make an order for winding up the company with or without costs, or any other order that it thinks fit:

Provided that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar, or in holding the statutory meeting, the Tribunal may—

(a) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(b) order the costs to be paid by any persons who, in the opinion of the Tribunal, are responsible for the default.

Order for winding up to be communicated to Official Liquidator and Registrar.

444. Where the Tribunal makes an order for the winding up of the company, the Tribunal, shall within a period not exceeding two weeks from the date of passing of the order, cause intimation thereof to be sent to the Official Liquidator and the Registrar.”.

Amendment of section 446.

49. In section 446 of the principal Act,—

(a) in sub-section (1), for the word “Court” at both the places where it occurs, the word “Tribunal” shall be substituted;

(b) in sub-section (2), for the words “The court which is winding up the company”, the words “The Tribunal” shall be substituted;

(c) sub-section (3) shall be omitted.

Insertion of new section 446A.

50. After section 446, the following section shall be inserted, namely:—

Responsibility of directors and officers to submit to Tribunal audited books and accounts.

“446A. The directors and other officers of every company shall ensure that books of account of the company are completed and audited up to date of winding up order made by the Tribunal and submitted to it at the cost of the company, failing which such directors and officers shall be liable for punishment for a term not exceeding one year and fine for an amount not exceeding one lakh rupees.”.

Substitution of new section for section 448.

51. For section 448 of the principal Act, the following section shall be substituted, namely:—

Appointment of Official Liquidator.

“448. (1) For the purposes of this Act, so far as it relates to the winding up of a company by the Tribunal, there shall be an Official Liquidator who—

(a) may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works accountants or firms having a combination of these professions, which the Central Government shall constitute for the Tribunal; or

(b) may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time; or

(c) may be a whole-time or a part-time officer appointed by the Central Government:

Provided that, before appointing the Official Liquidator, the Tribunal may give due regard to the views or opinion of the secured creditors and workmen.

(2) The terms and conditions for the appointment of the Official Liquidator and the remuneration payable to him shall be—

(a) approved by the Tribunal for those appointed under clauses (a) and (b) of sub-section (1), subject to a maximum remuneration of five per cent. of the value of debt recovered and realisation of sale of assets;

(b) approved by the Central Government for those appointed under clause (c) of sub-section (1) in accordance with the rules made by it in this behalf.

(3) Where the Official Liquidator is an officer appointed by the Central Government under clause (c) of sub-section (1), the Central Government may also appoint, if considered necessary, one or more Deputy Official Liquidators or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions, and the terms and conditions for the appointment of such Official Liquidators and the remuneration payable to them shall also be in accordance with the rules made by the Central Government.

(4) All references to the "Official Liquidator" in this Act shall be construed as reference to the Official Liquidator specified in sub-section (1), or to the Deputy Official Liquidator or Assistant Official Liquidator referred to in sub-section (3), as the case may be.

(5) The amount of the remuneration payable shall—

(a) form part of the winding up order made by the Tribunal;

(b) be treated as first charge on the realisation of the assets and be paid to the Official Liquidator or to the Central Government, as the case may be.

(6) The Official Liquidator shall conduct proceedings in the winding up of a company and perform such duties in reference thereto as the Tribunal may specify in this behalf:

Provided that the Tribunal may—

(a) transfer the work assigned from one Official Liquidator to another Official Liquidator for the reasons to be recorded in writing;

(b) remove the Official Liquidator on sufficient cause being shown;

(c) proceed against the Official Liquidator for professional misconduct.

52. In section 450 of the principal Act, for the word "Court" wherever it occurs, the word "Tribunal" shall be substituted.

Amendment of section 450.

53. In section 451 of the principal Act,—

Amendment of section 451.

(a) in sub-section (1), for the word "Court", the word "Tribunal" shall be substituted;

(b) in sub-section (2), for the words "Official Liquidator", the words, brackets, letter and figures "the Official Liquidator referred to in clause (c) of sub-section (1) of section 448" shall be substituted.

54. In sections 453 to 456 of the principal Act, for the word "Court", wherever it occurs, the word "Tribunal" shall be substituted.

Amendment of sections 453 to 456.

Amendment of
section 457

55. In section 457 of the principal Act,—

(a) for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted;

(b) in sub-section (1), after clause (c), the following clause shall be inserted, namely:—

“(ca) to sell whole of the undertaking of the company as a going concern;”;

(c) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) The liquidator shall—

(a) appoint security guards to protect the property of the company taken into his custody and to make out an inventory of the assets in consultation with secured creditors after giving them notice;

(b) appoint, as the case may be, valuer, chartered surveyors or chartered accountant to assess the value the company’s assets within fifteen days after taking into custody of property, assets referred to in sub-clause (a) and effects or actionable claims subject to such terms and conditions as may be specified by the Tribunal;

(c) give an advertisement, inviting bids for sale of the assets of the company, within fifteen days from the date of receiving valuation report from the valuer, chartered surveyors or chartered accountants referred to in clause (b), as the case may be.

(2B) The liquidator shall, immediately after the order for winding up or appointing the liquidator as provisional Liquidator is made, issue a notice requiring any of the persons mentioned in sub-section (2) of section 454, to submit and verify a statement of the affairs of the company and such notice shall be served by the liquidator.

(2C) The liquidator may apply to the Tribunal for an order directing any person who, in his opinion, is competent to furnish a statement of the affairs under sections 439A and 454 and such person shall for the said purpose be served a notice by the liquidator in the manner as may be prescribed.

(2D) The liquidator may, from time to time, call any person for recording any statement for the purpose of investigating the affairs of the company which is being wound up and it shall be the duty of every such person to attend to the liquidator at such time and place as the liquidator may appoint and give the liquidator all information which he may require and answer all such questions relating to winding up of company as may be put to him by the liquidator.

(2E) Every bidder shall, in response to advertisement referred to in clause (c) of sub-section (2A), deposit, his offer in the manner as may be prescribed, with liquidator or provisional liquidator, as the case may be, within forty-five days from the date of the advertisement and the liquidator or provisional liquidator shall permit inspection of property and assets in respect of which bids were invited :

Provided that such bid may be withdrawn within three days before the last day of closing of the bid:

Provided further that the inspection of property shall be open for not more than five days before closing of the bid.

(2F) The advertisement inviting bids shall contain the following details, namely:—

(a) name, address of registered office of the company and its branch offices, factories and plants and the place where assets of the company are kept and available for sale;

(b) last date for submitting bids which shall not exceed ninety days from the date of advertisement;

(c) time during which the premises of the company shall remain open for inspection;

- (d) the last date for withdrawing the bid;
- (e) financial guarantee which shall not be less than one-half of the value of the bid;
- (f) validity period of the bids;
- (g) place and date of opening of the bids in public;
- (h) reserve price and earnest money to be deposited along with the bid;
- (i) any other terms and conditions of sale which may be prescribed.

(2G) The liquidator appointed shall—

(a) maintain a separate bank account for each company under his charge for depositing the sale proceeds of the assets and recovery of debts of each company;

(b) maintain proper books of account in respect of all receipts and payments made by him in respect of each company and submit half yearly return of receipts and payments to the Tribunal.”.

56. In sections 458 and 458A of the principal Act, for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted.

Amendment of sections 458 and 458A.

57. For section 459 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 459.

“459. The liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD to assist him in the performance of his duties.”.

Provision for legal assistance to liquidator.

58. In sections 460 to 465 of the principal Act, for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted.

Amendment of sections 460 to 465.

59. In the heading before section 466 of the principal Act, for the word “Court”, the word “Tribunal” shall be substituted.

Amendment of heading before section 466.

60. For section 466 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 466.

“466. (1) The Tribunal may at any time after making a winding up order, on the application either of the Official Liquidator or of any creditor or contributory, and on proof to the satisfaction of the Tribunal that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Tribunal thinks fit.

Power of Tribunal to stay winding up.

(2) On any application under this section, the Tribunal may, before making an order, require the Official Liquidator to furnish to the Tribunal a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.”.

61. In sections 467 to 469 of the principal Act, for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted.

Amendment of sections 467 to 469.

62. For section 470 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 470.

Power of
Tribunal to
make calls.

“470. (1) The Tribunal may, at any time after making winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,—

(a) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made.

(2) In making a call, the Tribunal may take into consideration the probability that some of the contributories may, partly or wholly, fail to pay the call.”.

Amendment of
section 471.

63. In section 471 of the principal Act, for the word “Court” at both the places where it occurs, the word “Tribunal” shall be substituted.

Substitution of
new section for
section 472.

64. For section 472 of the principal Act, the following section shall be substituted, namely:—

Monies and
securities paid
into bank to be
subject to
order of
Tribunal.

“472. All moneys, bills, hundis, notes and other securities paid or delivered into the Reserve Bank of India in the course of the winding up of a company by the Tribunal, shall be subject in all respects to the orders of the Tribunal.”.

Amendment of
sections 473 to
477.

65. In sections 473 to 477 of the principal Act, for the word “Court” wherever it occurs, the word “Tribunal” shall be substituted.

Amendment of
section 478.

66. In section 478 of the principal Act,—

(a) for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted;

(b) in sub-section (3) and clause (b) of sub-section (6), for the words “advocate, attorney or pleader entitled to appear before the Court”, the words, figures and letters “chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD” shall be substituted;

(c) for sub-section (10), the following sub-section shall be substituted, namely:—

“(10) An examination under this section may, if the Tribunal so directs, be held before any person or authority authorised by the Tribunal.”;

(d) in sub-section (11), for the words “exercised by the Judge or officer”, the words “exercised by the person or authority” shall be substituted.

Amendment of
section 479.

67. In section 479 of the principal Act, for the word “Court” wherever it occurs, the word “Tribunal” shall be substituted.

Substitution of
new section for
section 480.

68. For section 480 of the principal Act, the following section shall be substituted, namely:—

Saving of
existing
powers of
Tribunal.

“480. Any powers conferred on the Tribunal by this Act shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.”.

Amendment of
section 481.

69. In section 481 of the principal Act, for the word “Court” at both the places where it occurs, the word “Tribunal” shall be substituted.

70. In section 483 of the principal Act, for the words “any order made, or decision given”, the words, brackets and figures “any order made or decision given before the commencement of the Companies (Amendment) Act, 2001” shall be substituted. Amendment of section 483.
71. In sections 490 and 492 of the principal Act, for the word “Court,”, wherever it occurs, the word “Tribunal” shall be substituted. Amendment of sections 490 and 492.
72. In section 494 of the principal Act, in sub-section (5),—
 (a) for the words “or subject to the supervision of the Court”, the word the “Tribunal” shall be substituted;
 (b) for the words “sanctioned by the Court” the words “sanctioned by the Tribunal” shall be substituted. Amendment of section 494.
73. In section 497 of the principal Act, —
 (a) for the word “Court”. wherever it occurs, the word “Tribunal” shall be substituted;
 (b) for the words “Official Liquidator”, wherever they occur, the words, brackets, letter and figures “Official Liquidator referred to in clause (c) of sub-section (1) of section 448” shall be substituted. Amendment of section 497.
74. In sections 502 to 504, 506 and 507 of the principal Act, for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted. Amendment of sections 502 to 504, 506 and 507.
75. In section 509 of the principal Act,—
 (a) for the words “Official Liquidator” wherever it occurs, the words, brackets, letter and figures “Official Liquidator referred to in clause (c) of sub-section (1) of section 448” shall be substituted;
 (b) for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted. Amendment of section 509.
76. In sections 511A and 512 of the principal Act, for the word “Court” wherever it occurs, the word “Tribunal” shall be substituted. Amendment of sections 511A and 512.
77. Section 513 of the principal Act shall be omitted. Omission of section 513.
78. For section 515 of the principal Act, the following section shall be substituted, namely:—
 “515. (1) If from any cause whatever, there is no liquidator acting, the Tribunal may appoint the Official Liquidator or any other person as a liquidator. Power of Tribunal to appoint and remove liquidator in voluntary winding up.
 (2) The Tribunal may, on cause shown, remove a liquidator and appoint the Official Liquidator or any other person as a liquidator in place of the removed liquidator.
 (3) The Tribunal may also appoint or remove a liquidator on the application made by the Registrar in this behalf.
 (4) If the Official Liquidator is appointed as liquidator under the proviso to sub-section (2) of section 502 or under this section, the remuneration to be paid to him shall be fixed by the Tribunal and shall be credited to the Central Government.”.

Amendment of section 517.

79. In section 517 of the principal Act, for the word “Court”, at both the places where it occurs, the word “Tribunal” shall be substituted.

Substitution of new sections for sections 518 and 519.

80. For sections 518 and 519, of the principal Act, the following sections shall be substituted, namely:—

Power to apply to Tribunal to have questions determined or powers exercised.

“518. (1) The liquidator or any contributory or creditor may apply to the Tribunal,—

(a) to determine any question arising in the winding up of a company; or

(b) to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise if the company were being wound up by the Tribunal.

(2) The liquidator or any creditor or contributory may apply to the Tribunal for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(3) The Tribunal, if satisfied on an application under sub-section (1) or sub-section (2) that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the applications as it thinks just.

(4) A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed to the Registrar, who shall make a minute of the order in his books relating to the company.

Application of liquidator to Tribunal for public examination of promoters, directors, etc.

519. (1) The liquidator may make a report to the Tribunal stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation; and the Tribunal may, after considering the report, direct that persons or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

(2) The provisions of sub-sections (2) to (11) of section 478 shall apply in relation to any examination directed under sub-section (1) as they apply in relation to an examination directed under sub-section (1) of section 478 with references to the liquidator being substituted for references to the Official Liquidator in those provisions.”.

Omission of sections 522 to 527.

81. Sections 522 to 527 of the principal Act shall be omitted.

Amendment of sections 531 and 531A.

82. In sections 531 and 531A of the principal Act, for the words “or subject to the supervision of the Court”, the words “the Tribunal” shall be substituted.

Amendment of sections 533 and 535.

83. In sections 533 and 535 of the principal Act, for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted.

Amendment of section 536

84. In section 536 of the principal Act, in sub-section (2),—

(a) for the words “or subject to the supervision of the Court”, the word “the Tribunal” shall be substituted;

(b) for the words “unless the Court”, the word “unless the Tribunal” shall be substituted.

85. For section 537 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 537.

“537. (1) Where any company is being wound up by the Tribunal—

Avoidance of certain attachments, executions, etc., in winding up by Tribunal

(a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or

(b) any sale held, without leave of the Tribunal of any of the properties or effects of the company after such commencement,

shall be void.

(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.”.

86. In section 538 of the principal Act, in sub-section (1),—

Amendment of section 538

(a) for the words “or subject to the supervision of the Court”, the words “the Tribunal” shall be substituted;

(b) for the words “by the Court”, the words “by the Tribunal” shall be substituted.

87. In sections 540 and 542 of the principal Act, for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted.

Amendment of sections 540 and 542.

88. For section 543 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 543

“543. (1) If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, liquidator or officer of the company —

Power of Tribunal to assess damages against delinquent directors, etc.

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company,

the Tribunal may, on the application of the Official Liquidator, or the liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal thinks just.

(2) An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust as the case may be, whichever is longer.

(3) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.”.

- Amendment of section 544. 89. In section 544 of the principal Act, for the word “Court”, the word “Tribunal” shall be substituted.
- Amendment of section 545. 90. In section 545 of the principal Act,—
 (a) in sub-section (1), for the words “or subject to the supervision of Court”, the words “the Tribunal” shall be substituted;
 (b) for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted.
- Amendment of section 546. 91. In section 546 of the principal Act,—
 (a) in sub-section (1),—
 (i) for the words “sanction of the Court”, the word “sanction of the Tribunal” shall be substituted;
 (ii) for the words “or subject to the supervision of the Court”, the words “the Tribunal” shall be substituted;
 (b) in sub-section (1A), —
 (i) for the words “winding up by the Court”, the words “winding up by the Tribunal” shall be substituted;
 (ii) for the words “sanction of the Court”, the words “sanction of the Tribunal” shall be substituted;
 (c) in sub-sections (2) and (3), for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted.
- Amendment of section 547. 92. In section 547 of the principal Act, in sub-section (1), for the words “or under the supervision of the Court”, the words “the Tribunal” shall be substituted.
- Amendment of section 549. 93. In section 549 of the principal Act, for the words “or subject to the supervision of Court”, the words “the Tribunal” shall be substituted.
- Amendment of section 550. 94. In section 550 of the principal Act,—
 (i) in sub-section (1), for clause (a), the following clause shall be substituted, namely:—
 “(a) in the case of winding up by the Tribunal, in such manner as the Tribunal directs;”;
 (ii) in sub-section (3), in clause (b), for the words “appeal to the Court”, the words “appeal to the Tribunal” shall be substituted.
- Amendment of section 551. 95. In section 551 of the principal Act,—
 (a) in sub-section (1), for clause (a), the following clause shall be substituted, namely:—
 “(a) in the case of a winding up by the Tribunal, in Tribunal; and”;
 (b) in sub-section (2), for the word “Court”, the word “Tribunal” shall be substituted.
- Amendment of section 553. 96. In section 553 of the principal Act, for the word “Court” wherever it occurs, the word “Tribunal” shall be substituted.

97. In section 555 of the principal Act,—
- (a) in sub-sections (6) and (9), for the words “or under the supervision of the Court”, the words “the Tribunal” shall be substituted;
- (b) for the word “Court” wherever it occurs, the word “Tribunal” shall be substituted.
98. In section 556 of the principal Act, for the word “Court”, at both the places where it occurs, the word “Tribunal” shall be substituted.
99. In the heading before section 557 of the principal Act, for the word “Court”, the word “Tribunal” shall be substituted.
100. In section 557 of the principal Act, for the word “Court”, wherever it occurs, the word “Tribunal” shall be substituted.
101. In section 558 of the principal Act,—
- (a) in sub-section (1), in clause (a), for the word “Court”, the words “Court or the Tribunal” shall be substituted;
- (b) in sub-section (2),—
- (i) for the words “All Courts”, the words “All Courts, Tribunals” shall be substituted;
- (ii) for the words “such Court”, the words “such Court, Tribunal” shall be substituted.
102. In sections 559, 560, 581 and 582 of the principal Act, for the word “Court” wherever it occurs, the word “Tribunal” shall be substituted.
103. In section 583 of the principal Act,—
- (a) in sub-section (1), for the words, brackets and figure “sub-sections (2)”, the words, brackets and figure “sub-section (3)” shall be substituted;
- (b) sub-section (2) shall be omitted;
- (c) in sub-section (3), for the words “or subject to the supervision of Court”, the words “by the Tribunal” shall be substituted;
- (d) in sub-section (4), for the word “Court”, the word “Tribunal” shall be substituted;
- (e) in sub-section (5),—
- (i) in clauses (a) and (b), for the word “Court”, the word “Tribunal” shall be substituted;
- (ii) in clause (c), for the words “order of any Court”, the words “order of any Court or Tribunal” shall be substituted;
- (iii) in clause (d), for the words “satisfaction of the Court”, the words “satisfaction of the Tribunal” shall be substituted.
104. In sections 587 to 589 of the principal Act, for the word “Court” wherever it occurs, the word “Tribunal” shall be substituted.
105. In section 610 of the principal Act, in sub-section (2), for the words “Company Law Board”, wherever they occur, the word “Tribunal” shall be substituted.
106. In section 614 of the principal Act, in sub-section (1), for the words “Company Law Board”, the word “Tribunal” shall be substituted.
107. In section 621 of the principal Act, in sub-section (1), the brackets, words and figures “(other than an offence with respect to which proceedings are instituted under section 545)” shall be omitted.

Amendment of
section 555.

Amendment of
section 556

Amendment of
heading before
section 557.

Amendment of
section 557.

Amendment of
section 558.

Amendment of
sections 559,
560, 581 and
582.

Amendment of
section 583.

Amendment of
sections 587 to
589.

Amendment of
section 610.

Amendment of
section 614.

Amendment of
section 621.

Amendment of section 621A.	<p>108. In section 621A of the principal Act,—</p> <p>(a) in sub-section (1), for the words “such sum as that Board”, the words “such sum as the Tribunal” shall be substituted;</p> <p>(b) for the words “Company Law Board”, wherever they occur, the word “Tribunal” shall be substituted.</p>
Amendment of section 626.	109. In section 626 of the principal Act, for the word “Court”, the words “Court or Tribunal” shall be substituted.
Amendment of section 627.	<p>110. In section 627 of the principal Act,—</p> <p>(a) in sub-section (1), after the words “a Judge of a High Court in Chambers”, the words “or Tribunal, as the case may be” shall be inserted;</p> <p>(b) in sub-section (3), after the words “Judge of the High Court”, the words “or Tribunal, as the case may be” shall be inserted.</p>
Amendment of section 632.	111. In section 632 of the principal Act, for the word “Court”, the words “Court or Tribunal” shall be substituted.
Amendment of section 634A.	<p>112. In section 634A of the principal Act, the following proviso shall be inserted, namely:—</p> <p>“Provided that the provisions of this section shall not apply on and after the commencement of the Companies (Amendment) Act, 2001.”.</p>
Amendment of section 635.	113. In section 635 of the principal Act, in sub-section (4), for the words “Company Law Board”, the words “Company Law Board or Tribunal” shall be substituted.
Amendment of section 635B.	<p>114. In section 635B of the principal Act,—</p> <p>(a) for the words “Company Law Board” wherever they occur, the word “Tribunal” shall be substituted;</p> <p>(b) for the word “Court” at both the places where it occurs, the words “Appellate Tribunal” shall be substituted.</p>
Substitution of new section for section 637A.	115. For section 637A of the principal Act, the following section shall be substituted, namely:—
Power of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications.	<p>“637A. (1) Where the Central Government or Tribunal is required or authorised by any provision of this Act,—</p> <p>(a) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter; or</p> <p>(b) to give any direction in relation to any matter; or</p> <p>(c) to grant any exemption in relation to any matter,</p> <p>then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government or Tribunal may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.</p>

(2) Save as otherwise expressly provided in this Act, every application which may be, or is required to be, made to the Central Government or Tribunal under any provision of this Act—

(a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or Tribunal to, or in relation to, any matter; or

(b) in respect of any direction or exemption to be given or granted by that Government or Tribunal in relation to any matter; or

(c) in respect of any other matter,

shall be accompanied by such fee as may be prescribed :

Provided that different fees may be prescribed for applications in respect of different matters or in case of applications by companies, for applications by different classes of companies.”.

116. In the heading before section 640A of the principal Act, for the words “Court or the Company Law Board”, the words “Court or the Tribunal” shall be substituted.

Amendment of heading before section 640A.

117. For section 640A of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 640A.

“640A. Except as expressly provided in this behalf elsewhere in this Act, where by any provision of this Act, any order of the Court or Tribunal is required to be filed with the Registrar, or a company or any other person within a period specified therein, then, in computing that period, the time taken in drawing up the order and in obtaining a copy thereof shall be excluded.”.

Exclusion of time required in obtaining copies of order of Court or Tribunal.

118. In section 643 of the principal Act,—

Amendment of section 643.

(a) in sub-section (1), —

(i) in the opening portion, for the words “after consulting the High Courts”, the words “after consulting the Tribunal” shall be substituted;

(ii) in clause (b),—

(A) in sub-clause (i), for the words “in High Courts and in Courts subordinate thereto”, the words “in Tribunal” shall be substituted;

(B) in sub-clause (v), for the words “applications to be made to the Court”, the words “applications to be made to the Tribunal” shall be substituted;

(b) in sub-section (2),—

(i) for the words “imposed on the Court”, the words “imposed on the Tribunal” shall be substituted;

(ii) for the words “as an officer of the Court and subject to the control of the Court”, the words “as an officer of the Tribunal, and subject to the control of the Tribunal” shall be substituted;

(iii) in the proviso, for the words “leave of the Court”, the words “leave of the Tribunal” shall be substituted;

(c) in sub-section (3), after the words “at the commencement of this Act”, the words, brackets and figures “but before the commencement of the Companies (Amendment) Act, 2001” shall be substituted;

(d) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A). All rules made by the Supreme Court on the matters referred to in this section and in force at the commencement of the Companies (Amendment) Act, 2001, shall continue to be in force, in so far as they are not in consistent with the provisions of this Act, till such time the rules are made by the Supreme Court after consulting the Tribunal and any reference to the High Court in relation to winding up of a company in such rules shall be construed as reference of the Tribunal.”.

Insertion of
new section
647A.

Transfer of
winding up
proceedings to
Tribunal.

119. After section 647 of the principal Act, the following section shall be inserted, namely:—

“647A. All proceedings (including proceedings relating to arbitration, compromises, arrangements and reconstruction and winding up of a company) pending before the commencement of the Companies (Amendment) Act, 2001 before any District Court or High Court, under this Act, or the Insurance Act, 1938 or any other law for the time being in force other than under the Banking Regulation Act, 1949, shall be transferred to the Tribunal from the date to be notified by the Central Government, in the Official Gazette, and the Tribunal may proceed with the matter either *de novo* or from the stage it was so transferred:

4 of 1938.

10 of 1949.

Provided that where the winding up of a company has commenced, subject to the supervision of the District Court or a High Court, before the commencement of the Companies (Amendment) Act, 2001, such winding up shall continue to be under the supervision of the District Court or the High Court, as the case may be, and the company shall be wound up in the same manner and in the same incidents as if the Companies (Amendment) Act, 2001 had not been passed”.

Amendment of
Schedule XI to
Companies
Act, 1956.

Amendment of
other
enactments.

120. In Schedule XI to the principal Act, for the words “Company Law Board” wherever they occur, the word “Tribunal” shall be substituted.

121. The enactment specified in the Schedule to this Act shall be amended in the manner specified therein.

Insertion of
new section
651A.

Reference of
winding up of
companies in
other laws.

122. After section 651 of the principal Act, the following section shall be inserted, namely:—

“651A. Unless the context otherwise requires,—

(a) any reference to the winding up of a company by a Court or High Court or winding up of a company subject to supervision of a Court or High Court in any other law (except the Banking Regulation Act, 1949) shall, in so far as it relates to winding up of a company, be construed as winding up of a company by the Tribunal in accordance with the provisions of this Act;

10 of 1949.

(b) any reference to the Company Law Board in any other law, so far as it relates to the Company Law Board, shall be construed as the Tribunal under this Act.

THE SCHEDULE

(See section 121)

AMENDMENTS TO THE INSURANCE ACT, 1938

(4 OF 1938)

1. Section 2,—

7 of 1913.
1 of 1956.

(a) in clause (8), for “the Indian Companies Act, 1913”, substitute “the Companies Act, 1956”;

(b) after clause (13B), insert the following:—

1 of 1956.

‘(13BA) “National Company Law Tribunal” means the National Company Law Tribunal constituted under section 10FB of the Companies Act, 1956;

1 of 1956.

(13BB) “the National Company Law Appellate Tribunal” means the National Company Law Appellate Tribunal constituted under sub-section (1) of section 10FR of the Companies Act, 1956;’.

2. Section 53,—

1 of 1956.

(a) for sub-section (1), substitute the following, namely:—

“(1) The Tribunal may order the winding up in accordance with the Companies Act, 1956 of any insurance company and the provisions of that Act shall, subject to the provisions of this Act, apply accordingly.”;

(b) in sub-section (2), for “Court” wherever it occurs, substitute “Tribunal”.

7 of 1913.
1 of 1956.

3. Section 54, for “Indian Companies Act, 1913”, substitute “Companies Act, 1956”.

4. Section 55. —

7 of 1913.
1 of 1956.

(a) for “Court”, wherever it occurs, substitute “Tribunal”;

(b) in sub-section (3), for “section 246 of the Indian Companies Act, 1913”, substitute “section 643 of the Companies Act, 1956”.

5. Section 56, in sub-section (2), in the proviso, in clause (a), for “Court” at both the places where it occurs, substitute “Tribunal”.

6. Section 57,—

(a) in sub-section (1), omit “or under the supervision of the Court”;

(b) for “Court” wherever it occurs, substitute “Tribunal”.

7. Sections 58, 59, 60 and 61, for “Court” wherever it occurs, substitute “Tribunal”.

8. After section 61, insert the following:—

“61A. (1) Any person aggrieved by an order or decision of the Tribunal may prefer an appeal to the National Company Law Appellate Tribunal.

(2) No appeal shall lie to the National Company Law Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision made by the Tribunal is received by the appellant and it shall be in such form and accompanied by such fee as may be prescribed:

Appeal to
National
Company Law
Appellate
Tribunal.

Provided that the National Company Law Appellate Tribunal may entertain an appeal after the expiry of said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the National Company Law Appellate Tribunal shall, after giving parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The National Company Law Appellate Tribunal shall send a copy of every order made by it to the Tribunal and parties to the appeal.

(6) The appeal filed before the National Company Law Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of the receipt of the appeal.”

9. In section 110, in sub-section (1), in clause (f), omit “an insurer or”.

STATEMENT OF OBJECTS AND REASONS

The latest developments and innovations in Corporate laws required that the Companies Act, 1956 and other related laws concerning winding up of companies should be remodelled in line with the international practices in this field. Government constituted a Committee consisting of experts under the chairmanship of Justice V. Balakrishna Eradi, retired Supreme Court Judge to examine the law relating to insolvency and winding up of companies.

2. The Committee examined Companies Act, 1956 and also other laws having a bearing on the subject such as Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), Recovery of Debts due to Banks and Financial Institutions Act, 1993 and Securities Contracts (Regulation) Act, 1956; it also considered laws on corporate insolvency prevailing in industrially advanced countries. The Committee held wide ranging hearings and consultations on the subject.

3. On the basis of the recommendations of the Committee the present Bill has been prepared with the main objective of facilitating or expediting revival/rehabilitation of sick companies and protection of workers interests and where necessary, winding up of companies. The salient features of the Bill are as follows:—

(i) A National Company Law Tribunal will be set up. The powers and jurisdiction presently being exercised by various bodies viz, Company Law Board or Board for Industrial and Financial Reconstruction or Appellate Authority for Industrial and Financial Reconstruction or High Courts will now be consolidated and entrusted to the Tribunal. Thus, multiplicity of litigation before various courts or quasi-judicial bodies or forums regarding revival or rehabilitation or merger or amalgamation or winding up will be avoided as all these matters will be heard and decided by the proposed National Company Law Tribunal;

(ii) All the parties will be bound by the Tribunal's orders and in case of non-availability of a workable proposal for revival or rehabilitation etc. the Tribunal can decide the matter on merits including introduction of its own scheme;

(iii) The Tribunal shall work through Benches. There shall be ten special benches which will deal with the matters relating to revival or reconstruction or rehabilitation or winding up of companies;

(iv) This will reduce the entire process which is presently taking several years in winding up of the companies to about two years or so;

(v) Stripping of assets of sick companies will be avoided;

(vi) Since individual affidavits will be filed with National Company Law Tribunal which will have powers of contempt of Court, there will be an in-built seriousness;

(vii) There will be a fund known as Rehabilitation and Revival Fund which will be used to make primarily:

(a) interim payment of the dues of workmen of the company which has been declared sick or is under liquidation;

(b) protection of the assets of sick companies;

(c) revival and rehabilitation of sick companies.

(viii) 'Industrial Undertaking' in terms of sickness does not include :

(a) small scale industrial undertakings, as defined in clause (j) of section (3) of the Industrial (Development and Regulation) Act, 1951;

(b) Public Sector Undertakings, unless a reference is made by the Central Government and/or State Government, as the case may be.

(ix) As a result of this enactment everyone including workers, creditors, investors and the economy as a whole will stand to benefit.

5. The Bill seeks to achieve the above objectives.

6. The Notes on clauses explain, in detail, provisions of the Bill.

NEW DELHI;
The 21st August, 2001

ARUN JAITLEY.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter dated the 22nd August, 2001 from Shri Arun Jaitley, Minister of Law, Justice and Company Affairs to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Companies (Amendment) Bill, 2001, has recommended its introduction in Lok Sabha under article 117(1) of the Constitution and for its consideration by Lok Sabha under article 117(3) of the Constitution.

Notes on clauses

Clause 2.—This clause seeks to amend section 2 of the Companies Act, 1956 which relates to definitions. It is proposed to define various expressions occurring in the Bill. It is proposed to insert new clauses (1B), (19AA), (19AB), (29A), (31AA), (46AA), (46AB) and (49A) in the said Act to define certain expressions. Clause (1B) proposes to define “Appellate Tribunal” which means the National Company Law Appellate Tribunal constituted under the proposed sub-section (1) of section 10FR of the Companies Act, 1956. Clause (19AA) proposes to define “industrial company” which means a company which owns one or more industrial undertakings. Clause (19AB) proposes to define “industrial undertaking” which means any undertaking pertaining to any industry carried on in one or more factories or units by any company as defined in clause (aa) of section 3 of the Industries (Development and Regulation) Act, 1951 but does not include a small scale industrial undertaking as defined in clause (j) of that section. Clause (29A) proposes to define “net worth” which means the sum total of the paid-up capital and free reserves. For the purposes of this clause, “free reserves” means all reserves created out of the profits and share premium account but does not include reserves created out of revaluation of assets, write back of depreciation provisions and amalgamation. Clause (31AA) proposes to define “operating agency” which means any group of experts consisting of persons having special knowledge of business or industry in which the sick industrial company is engaged and includes public financial institution, State level institution, scheduled bank or any other person as may be specified as operating agency by the Tribunal; Clause (46AA) “sick industrial company” which means an industrial company, the accumulated losses of which, are equal to fifty per cent. or more of its average net worth in any one or more of four immediately preceding financial years; or which has failed to repay its debts within any three consecutive quarters on demand for its repayment by the creditor of such company. Clause (46AB) proposes to define “State level institution” which means any of the institutions, namely, (a) State Financial Corporations established under section 3 or section 3A and institutions notified under section 46 of the State Financial Corporations Act, 1951; (b) State Industrial Development Corporations registered under the Act. Clause (49A) proposes to define “Tribunal” which means the National Company Law Tribunal constituted under proposed sub-section (1) of section 10FB.

Clause 3.—This clause seeks to amend section 10E of the Companies Act, 1956. Under the existing provisions contained in the said section 10E, the Company Law Board exercises and discharges such powers and functions which are conferred on it under the Companies Act, 1956. The powers and functions of the Company Law Board are proposed to be conferred upon the Tribunal proposed to be constituted under new section 10FB which is proposed to be inserted by clause 6. It is, therefore, proposed to provide that the Company Law Board shall exercise and discharge such powers and functions before the commencement of the proposed legislation. The proposed amendment is of consequential nature.

Clause 4.—This clause seeks to amend the provisions of section 10F of the Companies Act, 1956 to provide that appeal against any decision or order of the Company Law Board made before the commencement of Companies (Amendment) Act, 2001 shall lie with the High Court. The proposed amendment is of consequential nature.

Clause 5.—This clause seeks to insert a new section 10FA in the Companies Act, 1956 to provide for dissolution of the Company Law Board as the National Company Law Tribunal is proposed to be constituted under that Act. The Chairman, Vice-Chairman and Members of the Company Law Board shall cease to function from the date the National Company Law Tribunal is constituted. The officers and other employees appointed on deputation basis shall be reverted to their parent cadre. Further, the officers and other employees of the Company Law Board employed on regular basis by that Board shall become the officers and employees of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to them if the rights in relation to that Board had not been transferred to, and vested in, the Central Government and shall continue to do so until and unless their employment in the Central Government is duly terminated or until their remunerations, terms and conditions of employment are duly altered

by that Government. It is further provided that all matters or proceedings or cases pending before the Company Law Board on or before the constitution of the National Company Law Tribunal shall, on its constitution, stand transferred to the National Company Law Tribunal.

Clause 6.—This clause seeks to insert new sections 10FB, 10FC, 10FD, 10FE, 10FF, 10FG, 10FH, 10FI, 10FJ, 10FK, 10FL, 10FM, 10FN, 10FO, 10FP, 10FQ, 10FR, 10FS, 10FT, 10FU, 10FV, 10FW, 10FX, 10FY, 10FZ, 10FZA, 10G, 10GA, 10GAA, 10GB, 10GC, 10GD, 10GE and 10GF in the Companies Act, 1956 relating to Tribunal and Appellate Tribunal. It is proposed to provide for the constitution of National Company Law Tribunal which shall exercise and discharge powers and functions conferred on it by the Companies Act, 1956 or under any other law. The Tribunal shall consist of a President and such number of Judicial and Technical Members not exceeding sixty-two who shall be appointed by the Central Government by notification in the Official Gazette. The President of the Tribunal, who is, or has been, or is qualified to be a Judge of High Court, shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee. The qualifications for appointment of Judicial and Technical Members of the Tribunal shall be such as specified in section 10FD. The term of office of the President shall be sixty-seven years and for any other Member it shall be sixty-five years or three years from the date on which he enters upon office, whichever is earlier. The President shall exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government and the President shall have authority to delegate such powers to any other Member or any other officer of the Tribunal subject to certain conditions. The President of the Tribunal shall be paid such salary and allowances as admissible, and other terms and conditions as applicable, to a Judge of a High Court in case a sitting High Court Judge is appointed as the President. The Salary and allowances and other terms and conditions of service of the President other than a sitting Judge of a High Court and Members shall be such as may be prescribed by the Central Government. The senior-most Member or any other Member of the Tribunal shall act as the President in certain circumstances like death, resignation, or otherwise. The President or a Member may resign his office by giving notice in writing. The Central Government may, in consultation with the Chief Justice of India, remove from office the President or any Member of the Tribunal who has been adjudged an insolvent, convicted of an offence, become physically or mentally incapable, has acquired financial or other interest prejudicial to his functions as President or Member. The Central Government shall also have power to remove the President or a Member on the ground of proved misbehaviour or incapacity after an inquiry made in this behalf. The salaries and allowances and other conditions of service of officers and other employees of the Tribunal shall be such as may be prescribed by the Central Government. It also provides that Benches shall be constituted by the President of the Tribunal with two Members out of whom one shall be a Technical member and the other a Judicial Member and such Bench shall be presided by the Judicial Member. It shall also be competent for the President to constitute a Bench consisting of a single Member. It is further provided that at least ten Special Benches consisting of three or more Members, one of whom shall be a Judicial Member and other two Members shall be those appointed under clauses (a) to (f) of sub-section (3) of section 10FD and clause (g) or clause (h) of sub-section (3) of that section shall be constituted for the disposal of any case relating to rehabilitation, restructuring or winding up of the companies. The Tribunal shall pass such orders as it thinks fit after an opportunity of being heard is given to the parties concerned. The Tribunal may, within two years from the date of orders, amend any order to rectify apparent mistake on the record if it is brought to the notice of the Tribunal by the parties. The Tribunal shall have power to review its own orders. The Tribunal may by special or general order delegate its powers to any Member or officer or other employee of the Tribunal. The Tribunal shall have power to seek assistance in writing of the Chief Metropolitan Magistrate or the District Magistrate to take into custody or under its control all property, effects and actionable claims of a sick industrial company. Any person aggrieved by an order or decision of the Tribunal may prefer an appeal to the Appellate Tribunal in such form and accompanied by such fee as may be prescribed. The Appellate Tribunal shall pass an order after giving parties to the appeal an opportunity of being heard. The Central Government shall by notification in the Official Gazette constitute the National Company Law Appellate Tribunal which shall consist of a Chairperson and not more than two Members. The Chairperson of

the Appellate Tribunal shall be a person who is, or has been, a Judge of the Supreme Court or Chief Justice of a High Court. A Member of the Appellate Tribunal shall be a person who is qualified for appointment as a Judicial Member of the Tribunal and other Member shall be a person of ability, integrity and standing having special knowledge and professional experience of not less than twenty years in science, technology, economics, banking, industry, law, etc. It further provides that the senior most Member or any other Member of the Appellate Tribunal shall act as the Chairperson in certain circumstances like death, resignation, or otherwise. The term of office of the Chairperson shall be seven years and for any other Member it shall be six years or three years from the date he enters upon office, whichever is earlier. It provides that the Chairperson or a Member shall resign his office by giving notice in writing. The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any Member of the Appellate Tribunal who has been adjudged an insolvent, convicted of an offence, become physically or mentally incapable, has acquired financial or other interest prejudicial to his functions as such Chairperson or Member. The Central Government shall also have power to remove the Chairperson or a Member on the ground of proved misbehaviour or incapacity after an enquiry made in this behalf. The Chairperson of the Appellate Tribunal shall be paid salary equivalent to that of a Judge of the Supreme Court and a Member shall be paid salary equivalent to that of a Judge of a High Court. The other terms and conditions of service of the Chairperson and Members shall be such as may be prescribed by the Central Government. The Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be appointed on the recommendation of a Selection Committee specified in the proposed section 10FX. The Chairperson, Members, officers and other employees of the Appellate Tribunal, the President, Members, officers and other employees of the Tribunal shall be deemed to be public servants.

No suit, prosecution or other legal proceeding shall lie against the Appellate Tribunal or its Chairperson, Member, officer or other employee of the Appellate Tribunal, or against the Tribunal; its President, the Appellate Tribunal of its Member, officer or employees or operating against or liquidator or any person authorised by the Appellate Tribunal or the Tribunal for any action which is in good faith done or intended to be done in pursuance of this Act. The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. The Appellate Tribunal shall have power to punish for contempt. The Central Government shall provide such officers and other employees to the Appellate Tribunal as that Government may think fit. The salaries and allowances and other terms and conditions of service of such officers and employees shall be prescribed by the Central Government. The appellant or applicant may appear either in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners to present its or his case before the Tribunal or the Appellate Tribunal. The provisions of the Limitation Act, 1963 shall apply to an appeal preferred to the Appellate Tribunal. It is also provided that any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such decision or order.

Clause 7.—This clause seeks to substitute a new section section 17 of the Companies Act, 1955. The existing provisions contained in section 17 of the Act empower Company Law Board to confirm alteration of memorandum of association of a company. It is now proposed to confer this power upon the National Company Law Tribunal. This amendment is of consequential nature.

Clause 8.—This clause seeks to amend sections 18, 19, 43, 49, 55A and 58A of the Companies Act, 1956 relating to alteration of memorandum of association to be registered within three months, effect of failure of such registration, consequences of default in complying with conditions constituting a company as private company, investments of company to be held in its own name, powers of Securities and Exchange Board of India so far as they relate to issue and transfer of securities and acceptance of deposits without issuing advertisement. It is proposed to confer the powers of the Company Law Board in the aforesaid sections upon the Tribunal. These amendments are of consequential nature.

Clause 9.—This clause seeks to amend section 58AA of the Companies Act, 1956. Under the existing provisions, every company may accept deposits from small depositors in accordance with the provisions contained in that section. The Company Law Board is conferred upon certain powers in the event of default in repayment of deposits to small depositors. It is now proposed to confer the same powers upon the Tribunal. This amendment is of consequential nature.

Clause 10.—This clause seeks to amend sub-section (1) of section 75 of the Companies Act, 1956 relating to returns as to allotments. The provisions contained in the existing section, *inter alia*, require a company to file return of allotment of issue of shares at discount with a copy of the order of the Court sanctioning such issue. It is proposed to confer this power of sanctioning the issue upon the Tribunal. This amendment is of consequential nature.

Clause 11.—This clause seeks to amend section 79 of the Companies Act, 1956 relating to power to issue shares at a discount. The provisions contained in the existing section empower the Company Law Board to sanction issue of shares at discount. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 12.—This clause seeks to amend section 80A of the Companies Act, 1956 relating to redemption of irredeemable preference shares, etc. Under the existing provisions contained in this section where a company is not in a position to redeem any such shares within the period specified in that section and pay dividend thereon, such company may with the consent of the Company Law Board issue further redeemable preference shares equal to the amount due in respect of the unredeemed preference shares. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 13.—This clause seeks to amend section 104 of the Companies Act, 1956. The existing provisions contained in the section deal with liability of Members in respect of reduced shares. The provisions contained in the said section confer power upon the Court to settle the list of persons liable to contribute and enforce the calls in the winding up of a company. It is proposed to confer this power upon the Tribunal. This amendment is of consequential nature.

Clause 14.—This clause seeks to amend sections 111, 111A, 113, 117B, 117C and 118 of the Companies Act, 1956 relating to power to refuse registration of transfer of shares or interest of a Member or debentures and appeal against such refusal, rectification of register on transfer, limitation of time for issue of certificates, appointment of debenture trustees and duties of debenture trustees, liability of company to create security and debenture redemption reserve and right to obtain copies of and inspect trust deed. The Company Law Board has been conferred upon certain powers under these sections. It is proposed to confer these powers of the Company Law Board upon the Tribunal. These amendments are of consequential nature.

Clause 15.—This clause seeks to amend section 141 of the Companies Act, 1956. The provisions contained in the said section empower the Company Law Board to rectify the register of charges. It is proposed to confer this power upon the Tribunal. This amendment is of consequential nature.

Clause 16.—This clause seeks to amend sections 144 and 163 of the Companies Act, 1956. The existing provisions contained in sections 144 and 163 of the Act, *inter alia*, empower the Company Law Board to compel an immediate inspection of copies of instruments creating charges and documents or taking extract thereof. It is now proposed to confer these powers upon the Tribunal. These amendments are of consequential nature.

Clause 17.—This clause seeks to substitute section 167 of the Companies Act, 1956 which confers power on the Company Law Board to call a general meeting in case of default of holding such meeting. It is now proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 18.—This clause seeks to amend section 168 of the Companies Act, 1956. The existing provisions contained in the section relate to the penalty for default in complying with the provisions of sections 166 or 167 of the Act. The reference to Central Government is

proposed to be substituted by the Tribunal in the said section 168. This amendment is of consequential nature.

Clause 19.—This clause seeks to substitute section 186 of the Companies Act, 1956. The existing provisions contained in the section empower the Company Law Board to order for calling a meeting other than the annual general meeting if, for any reason, it is impracticable to call such a meeting of a company. It is proposed to confer this power upon the Tribunal. This amendment is of consequential nature.

Clause 20.—This clause seeks to amend sections 188 and 196 of the Companies Act, 1956 relating to circulation of member's resolutions and inspection of minute books of general meetings, respectively. Sub-section (5) of section 188 of the Companies Act, 1956 provides that the company shall not be bound to circulate any statement if the Company Law Board is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Company Law Board may order the company's cost to be paid to the requisitionists. It is proposed to confer this power upon the Tribunal.

Section 196 of the Companies Act, 1956 confers power upon the Company Law Board to compel an immediate inspection of the minute books or direct that the copy required shall forthwith be sent to the person requiring it. It is proposed to confer this power upon the Tribunal.

These amendments are of consequential in nature.

Clause 21.—This clause seeks to amend section 203 of the Companies Act, 1956 relating to power to restrain fraudulent person from managing companies. The provisions, contained in the said section *inter alia*, empower the Court to make an order that a person convicted of any offence in connection with the promotion, formation or management of a company or guilty of an offence punishable under section 542 of that Act shall not, without the leave of the Court, be a director of a company or take part in the promotion, formation or management of a company for such period not exceeding five years, as may be specified in the order. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 22.—This clause seeks to amend sections 219, 225, 235, 236, 237 and 241 of the Companies Act, 1956. The existing provisions contained in these sections, *inter alia*, confer upon the Company Law Board power, to order, furnishing copies of balance-sheet and auditor's report, to pass certain orders relating to resolution for appointing or removing the retiring auditor, and to give opinion to the Central Government in appointing inspectors to investigate the affairs of a company. It is proposed to confer these powers upon the Tribunal. These amendments are of consequential nature.

Clause 23.—This clause seeks to amend section 243 of the Companies Act, 1956. The existing provisions contained in the said section enable the Central Government to present a petition for winding up or make an application for an order to the Court under section 397 or section 398 of the Act by reason of circumstances mentioned in section 237 of the Act. It is proposed to provide that the Central Government shall present the petition or application to the Tribunal instead of the Court. This amendment is of consequential nature.

Clause 24.—This clause seeks to amend sections 247, 250, 251, 269, 284, 304 and 307 of the Companies Act, 1956. The existing provisions contained in the said sections, *inter alia*, relate to appointment of one or more inspectors by the Central Government on the orders of the Company Law Board to investigate and report on the membership of the company, imposition of restriction upon shares and debentures and prohibition of transfer of shares and debentures in certain cases, saving for legal advisers and bankers from disclosing any information to the Company Law Board, reference to the Company Law Board in making order relating to appointment of managing director or whole-time director or manager in contravention of the requirements of Schedule XIII, passing of orders by the Company Law Board relating to resolution for removal of directors and ordering the company for immediate inspection of the register kept under section 303 of the said Act and keeping of register of directors shareholdings, etc. The Company Law Board has been conferred certain

powers under the said sections. It is proposed to confer these powers of the Company Law Board under these sections upon the Tribunal. These amendments are of consequential nature.

Clause 25.—This clause seeks to amend section 318 of the Companies Act, 1956 relating to compensation for loss of office not permissible except to managing or whole-time director or to directors who are managers. Sub-section (3) of the said section contains reference of winding up of a company by or subject to the supervision of the Court. The winding up of a company subject to the supervision of Court is proposed to be omitted by clause 81 of the Bill. It is, therefore, proposed to substitute the reference of winding up of a company by or subject to the supervision of Court by order of the Tribunal. This amendment is of consequential nature.

Clause 26.—This clause seeks to amend Chapter IVA in Part VI of the Companies Act, 1956. The existing provisions contained in the said Chapter relate to reference to the Company Law Board of appeals against managerial personnel, interim order by the Company Law Board, decision of the Company Law Board and power of the Central Government to remove such managerial personnel on the basis of the decision of the Company Law Board, etc. It is proposed to confer the powers of Company Law Board specified under the said Chapter IVA upon the Tribunal. These amendments are of consequential nature.

Clause 27.—This clause seeks to amend section 391 of the Companies Act, 1956. The existing provisions contained in the said section confer power upon the Court to make an order for compromise or arrangements with the creditors and members. Sub-section (7) of the said section confers power to hear appeals from any order made by a court exercising original jurisdiction to the Court empowered to hear appeals. It is proposed to omit sub-section (7) and also to confer the powers of the Court upon the Tribunal. These amendments are of consequential nature.

Clause 28.—This clause seeks to substitute section 392 of the Companies Act, 1956. The existing provisions contained in the said section confer power with the High Court to enforce an order of compromises and arrangements under section 391. It is proposed to confer the powers of the Court upon the Tribunal. This amendment is of consequential nature.

Clause 29.—This clause seeks to amend section 394 of the Companies Act, 1956. The existing provisions contained in the said section relate to the provisions for facilitating reconstruction and amalgamation of companies under the existing provisions, the compromise or arrangements proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company which is being wound up, with any other company shall not be sanctioned by the Court unless a report has been received from the Company Law Board. It is proposed to delete the words "Company Law Board" from the first proviso to sub-section (1) of the said section and also to confer the powers of the Court under the said section upon the Tribunal. This amendment is of consequential nature.

Clause 30.—This clause seeks to amend sections 394A and 395 of the Companies Act, 1956 relating to notice to be given to the Central Government for applications under sections 391 and 394 of the Act and power and duty to acquire shares of shareholders dissenting from scheme or contract approved by majority. The Court has been conferred certain powers under these sections. It is proposed to confer these powers upon the Tribunal. These amendments are of consequential nature.

Clause 31.—This clause seeks to amend section 396 of the Companies Act, 1956. The existing provisions contained in the said section, *inter alia*, confers powers upon the Company Law Board to pass an order on an appeal filed by a person against the orders of assessment of compensation made by the prescribed authority under sub-section (3) of that section. It is proposed to confer this power upon the Tribunal. This amendment is of consequential nature.

Clause 32.—This clause seeks to amend Chapter VI of Part VI of the Companies Act, 1956. The existing provisions contained in the said Chapter confer certain powers upon the Company Law Board in respect of prevention of oppression and mismanagement of the

company. It is proposed to confer these powers upon the Tribunal. This amendment is of consequential nature.

Clause 33.—This clause seeks to amend section 410 of the Companies Act, 1956. The existing provisions contained in the section relate to constitution of an Advisory Committee for the purpose of advising the Central Government and the Company Law Board on such matters arising out of the administration of the Act, as may be referred to it by that Government or Board. It is proposed to substitute the word “Tribunal” for the words “Company Law Board”. This amendment is of consequential nature.

Clause 34.—This clause seeks to substitute section 424 of the Companies Act, 1956 relating to application of sections 421 to 423 of the Act to the receivers and managers appointed by the Court in pursuance of an instrument. It is proposed to confer this power of appointment of receivers and managers upon the Tribunal. This amendment is of consequential nature.

Clause 35.—This clause provides for insertion of new Part VIA in the Companies Act, 1956 consisting of new sections 424A, 424B, 424C, 424D, 424E, 424F, 424G, 424H, 424I, 424J, 424K and 424L relating to revival, rehabilitation and winding up of sick industrial companies.

Under the provisions contained in section 424A, the Board of directors in a sick industrial company shall make a reference to the Tribunal within one hundred eighty days from the date on which the Board of directors of such company come to know of relevant facts giving rise to causes of such references, with such particulars as may be prescribed. It is further provided that the application shall be accompanied with auditors certificate certifying causes of sickness.

The Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank can also make a reference in respect of a company which has become a sick company to the Tribunal for determination of the measures which may be adopted with respect to such company. A reference is not required to be made in respect of a Government company. However, a Government company may make a reference to the Tribunal under this section with the previous approval of the Central Government or the State Government as the case may be.

Section 424B enables the National Company Law Tribunal to make or cause to be made an enquiry by an operating agency for the purpose of determining whether the industrial company has become a sick industrial company. The Tribunal shall complete its inquiry within sixty days which may be extended to ninety days. The Tribunal while making an inquiry under this section, may appoint one or more person to be special director on the board of such industrial company for safeguarding its financial and other interests or in the public interest. The special director shall submit a report upon the Tribunal within sixty days from the commencement of inquiry. A special director appointed under this section shall hold office during the pleasure of the Tribunal and may, by an order of the Tribunal, be removed or substituted by any person. The special director shall not incur any obligation or liability by reason of his being a director or for anything done or omitted to be done in good faith in discharge of his duties as a director.

Section 424C provides that if the Tribunal is satisfied that a company has become a sick industrial company after considering all the relevant facts and circumstances, it may allow the company to make its net worth exceed the accumulated losses within a reasonable time or make repayment of its debt. If the Tribunal decides that it is not practicable for a company to make its net worth exceed the accumulated losses or make the repayment of its debts within such reasonable time, it may direct an operating agency specified in an order to prepare a scheme providing for such measures in relation to such company.

Section 424D provides that the operating agency specified in the order by the Tribunal shall prepare a scheme with respect to such sick industrial company having regard to the guidelines framed by the Reserve Bank of India in this behalf, within a period of sixty days from the date of order by the Tribunal. The scheme prepared by the operating agency shall provide for one or more of the measures specified in section 424D. The scheme prepared by the operating agency shall be examined by the Tribunal and a copy of the scheme with

modifications, if any, made by the Tribunal shall be sent in draft to the company and be published in such daily newspapers as the Tribunal considers necessary for inviting suggestions and objections, if any. The scheme thereafter may be sanctioned within sixty days by the Tribunal and will take effect from such date as may be specified by the Tribunal. However, the Tribunal may extend the said period to ninety days for reasons to be recorded in writing. The Tribunal shall have power to review any sanctioned scheme on the recommendations of the operating agency. The sanctioned scheme under this section shall be conclusive evidence that all the requirements of the scheme relating to reconstruction or amalgamation or any other measure specified therein have been complied with.

Section 424E provides that the sanctioned scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority, etc. A copy of the scheme shall to provide financial assistance be circulated to every person for his consent within a period of sixty days from the date of such circulation. On receipt of the consent in respect of any scheme, the Tribunal may sanction the scheme and such sanction of the scheme shall be binding required to provide financial assistance shall designate by mutual agreement financial institution and a bank from amongst for on all concerned the financial institutions and the banks disbursement of financial assistance by way of loans, advances, etc., under the scheme. If the financial institutions and the banks do not give consent to provide financial assistance, the Tribunal may adopt such other measures such as winding up of the sick industrial company.

Section 424F provides that the sick industrial company or the Central Government or the Reserve Bank of India or the State Government or a public financial institution or a State level institution or a scheduled bank or any other institution which intend to provide financial assistance may make an application to the Tribunal agreeing to the arrangement for continuing the operations of the sick industrial company or suggesting a scheme for the financial reconstruction of the sick industrial company. The Tribunal may within sixty days of receipt of such application pass such orders as it may deem fit.

Section 424G provides that after making inquiry by the Tribunal and after consideration of all the relevant facts and circumstances and after hearing all the concerned parties, if the Tribunal is of the opinion that the sick industrial company is not likely to become viable, it may record its findings and order winding up of the company. The Tribunal may appoint any officer of the operating agency with the consent of the operating agency as the liquidator of such sick industrial company. The Tribunal may also have power to sell the assets of the sick industrial company for distribution in accordance with the provisions of section 529A of the Companies Act, 1956. The winding up of a company shall, as far as may be, conclude within one year from the date of the order of winding up.

Section 424H provides that for the proper discharge of the functions of the Tribunal under this Act, it may through an operating agency, cause to prepare an inventory of all assets and liabilities of the company, all books of accounts, registers, maps, plans, records etc., an inventory of list of shareholders and a list of creditors including a valuation report, estimate of reserve price, lease rent or share exchange ratio, etc., specified in that section.

Section 424-I provides that the Tribunal may, by order in writing, direct any sick industrial company not to dispose of any of its assets during the period of preparation or consideration of the scheme under section 424C except with the approval of the Tribunal. Such direction shall be issued if it is necessary in the interest of sick industrial company or creditors or shareholders or in the public interest.

Section 424I provides that the Tribunal may call for any periodic information from the company as to the steps taken by the company to make its net worth exceed the accumulated losses or to make repayment of its debts.

Section 424K provides that if it appears to the Tribunal during the course of scrutiny or implementation of any scheme or proposal that any person who has taken part in the promotion, formation or management of the sick industrial company has misapplied or retained or become liable or accountable for any money or has been guilty of any misfeasance,

malfeasance or non-feasance of breach of trust in relation to such company, the Tribunal may order directing him to repay or restore the money or property or contribute such sum to the asset of sick industrial company as it thinks, just and report the matter to the Central Government. Further, if the Tribunal is satisfied it shall also pass an order directing the financial institutions, scheduled banks etc. not to provide during a period of ten years from the date of the order any financial assistance to such person.

Section 424L provides that if any person violates the provisions of these sections or any scheme or an order of the Tribunal or Appellate Tribunal or makes a false statement or gives fake evidence or attempts to temper the records of reference or appeal, he shall be punishable with simple imprisonment for a term which may extend to three years or shall be liable to fine not exceeding ten lakh rupees. A complaint under this section shall not be entertained except in writing by an officer of the Tribunal or Appellate Tribunal or an officer of any operating agency or an officer of the Central Government who may be authorised by the Tribunal.

Clause 36.—This clause seeks to amend section 425 of the Companies Act, 1956. The existing provisions contained in the said section deal with the modes of winding up. One of the modes of winding up is by the Court. It is proposed to confer power of winding up of a company upon the Tribunal. The winding up subject to the supervision of the Court is proposed to be omitted by clause 81 of the Bill. Therefore, reference of winding up of a company subject to the supervision of a Court specified in clause (c) of sub-section (1) of the aforesaid section is proposed to be omitted. These amendments are of consequential nature.

Clause 37.—This clause seeks to amend sections 426 and 427 of the Companies Act, 1956 relating to liability as contributories of present and past members and obligations of directors and managers whose liability is unlimited, respectively. Clause (c) of sub-section (1) of the said section 426, *inter alia*, provides that in the event of a company being wound up, no past member shall be liable to contribute unless it appears to the Court that the present members are unable to satisfy the contributions required to be made by them in pursuance of the Act. It is proposed to substitute the said reference of "Court" by "Tribunal". Clause (c) of the said section 427, *inter alia*, provides that in the winding up of a limited company, subject to the articles of the company, a director or manager shall not be liable to make further contributions specified in that section unless the Court deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up. It is proposed to substitute the said reference of "Court" by "Tribunal". These amendments are of consequential nature.

Clause 38.—This clause seeks to amend the heading and sub-heading before section 433 of the Companies Act, 1956. This clause proposes to substitute the word "Tribunal" for the word "Court". This amendment is of consequential nature.

Clause 39.—This clause proposes to substitute a new section for section 433 of the Companies Act, 1956. The existing section 433 of the Act specifies the circumstances in which the company may be wound up by Court. It is proposed to provide that the company shall be wound up by the Tribunal instead of Court. It is also proposed to add three new clauses in the said section to provide for grounds for winding up of a company in addition to the existing grounds of winding up specified in existing section 433 of the Act. The new grounds provide that a company may be wound up by the Tribunal if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, the friendly relations with foreign States, public order, decency or morality or if the company has made a default in filing with the Registrar its balance sheets and profit and loss account or annual returns for five consecutive financial years or if the Tribunal is of the opinion that the company should be wound up under the circumstances specified in the new section 424G proposed to be inserted by clause 35 of the Bill.

Clause 40.—This clause seeks to amend section 434 of the Companies Act, 1956. The existing provisions contained in the section provide for the circumstances under which a company shall be deemed unable to pay its debts. A company, *inter alia*, shall be deemed to be unable to pay its debts if it is indebted in a sum exceeding five hundred rupees. It is

proposed to increase this limit of five hundred rupees to one lakh rupees. Further, the words "any Court" are also proposed to be substituted by the words "any Court or Tribunal" so as to include the decrees of the Court or the orders of the Tribunal, as the case may be, within the scope of the said section. These amendments are of consequential nature.

Clause 41.—This clause seeks to omit the heading occurring before section 435 and sections 435 to 438 of the Companies Act, 1956. The existing provisions contained in the said sections relate to transfer of winding up proceedings to District Court, withdrawal and transfer of winding up from one District Court to another, power of High Court to retain winding up proceedings in District Court and jurisdiction of High Courts under sections 435, 436 and 437 of the Act to be exercised at any time and at any stage. The powers of Court in respect of above matters are proposed to be transferred to the Tribunal. The omission of the said heading and section is of consequential nature.

Clause 42.—This clause seeks to amend section 439 of the Companies Act, 1956. This section provides that an application to the Court for winding up of a company shall be by petition presented by the persons specified in that section. It is proposed to confer the said power of the Court upon the Tribunal. It is also proposed to provide that application for winding up on the ground that the company has acted against the interests of the sovereignty and integrity of India and other grounds specified in new clause (h) of section 433 of the Companies Act, 1956 shall be made by the Central or State Government. These amendments are of consequential nature.

Clause 43.—This clause seeks to insert a new section 439A in the Companies Act, 1956 relating to statement of affairs to be filed on winding up of a company. This clause provides that every company shall file a statement of its affairs along with the petition for winding up before the Tribunal. Such statement of affairs shall include details, such as the last known addresses of all the directors and name and addresses of the company secretary; the details of location of assets of the company and their value; and the details of debtors and creditors with their addresses and such other details as the Tribunal may direct.

Clause 44.—This clause seeks to substitute sections 440 and 441 of the Companies Act, 1956. Section 440 contains provisions for presentation of winding up petition to the Court by persons specified in that section in a case where a company is being wound up voluntarily or subject to Court's supervision. Section 441 relates to the commencement of winding up by the Court. It is proposed to substitute the said sections 440 and 441 so as to omit the reference of winding up of a company subject to supervision of Court and substitute the reference of "Court" by "Tribunal".

Clause 45.—This clause seeks to insert new sections 441A, 441B, 441C, 441D, 441E and 441F in the Companies Act, 1956 for levy by way of cess and formation of a Fund. It is proposed to levy and collect for the purposes of rehabilitation or revival or protection of assets of the sick industrial company a levy by way of cess at a rate not less than 0.005% and not more than 0.1% on the value of annual turnover of every company or on its gross receipt, whichever is more. Every company shall pay the cess to the Central Government within three months from the close of the financial year. The proceeds of cess levied and collected shall be first credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Tribunal such sums of money as it thinks fit out of such proceeds for being utilised for the purposes of the Fund. Further, a Fund to be called the Rehabilitation and Revival Fund for the purposes of rehabilitation or revival or protection of assets of a sick industrial company shall be formed. If any cess payable by a company is not paid within the stipulated time, it shall be deemed to be in arrears and the same shall be recovered by the Tribunal in the manner as may be prescribed. The Tribunal may also impose a penalty not exceeding ten times the amount in arrears.

Clause 46.—This clause seeks to amend the heading before section 442 of the Companies Act, 1956 relating to powers of Court. It is proposed to substitute the word "Tribunal" for the word "Court". This amendment is of consequential nature.

Clause 47.—This clause seeks to omit section 442 of the Companies Act, 1956. The existing provisions contained in the said section empower the Court to stay or restrain proceedings against company at any time after the presentation of a winding up petition. It is proposed to omit the section which is of consequential nature.

Clause 48.—This clause proposes to substitute sections 443 and 444 of the Companies Act, 1956. The existing provisions contained in the said section 443 confer powers upon the Court for hearing winding up petitions and make orders specified in that section. The provisions contained in the said section 444 provide for communicating the order of the Court for winding up of a company to the Official Liquidator and Registrar. It is proposed to confer the said powers upon the Tribunal. These amendments are of consequential nature.

Clause 49.—This clause seeks to amend section 446 of the Companies Act, 1956 relating to suits stayed on winding up order. The Court has been conferred certain powers under that section. It is proposed to confer the said powers of the Court under the said section upon the Tribunal. This amendment is of consequential nature.

Clause 50.—This clause seeks to insert a new section 446A in the Companies Act, 1956. The provisions contained in the proposed section provide that directors and other officers of every company shall ensure that books of account of the company are completed and audited up to date of winding up order made by the Tribunal and submitted to it at the cost of company failing which such directors and other officers shall be liable for punishment for a term not exceeding one year and fine for an amount not exceeding one lakh rupees.

Clause 51.—This clause seeks to substitute section 448 of the Companies Act, 1956. The existing provisions contained in the section deal with appointment of Official Liquidator. It further provides that the Central Government may appoint one or more Deputy Official Liquidator or Assistant Official Liquidator to assist the Official Liquidator and they shall be deemed to be Official Liquidator for all purposes. It is proposed to substitute the said section by a new section to appoint an Official Liquidator from a panel of professional firms of chartered accountants or a body corporate consisting of professionals or whole time or part time officers appointed by the Central Government. The amount of remuneration payable to such Official Liquidator who are appointed from such panel of professionals shall be approved by the Tribunal. In case of whole-time or part-time officers of the Central Government appointed as Official Liquidator, the remuneration shall be approved by the Central Government. The new section also confers power upon the Tribunal to transfer the work assigned from one Official Liquidator to another Official Liquidator, remove the Official Liquidator or proceed against the Official Liquidator for professional misconduct.

Clause 52.—This clause seeks to amend section 450 of the Companies Act, 1956. The existing provisions contained in the section provide for the appointment and powers of provisional liquidator by the Court. It is proposed to confer the said powers of the Court upon the Tribunal. This amendment is of consequential nature.

Clause 53.—This clause seeks to amend section 451 of the Companies Act, 1956. The existing provisions contained in the said section provide that the liquidator shall conduct the proceedings in winding up of the company and perform such duties in reference thereto as the Court may impose. It is proposed to confer the said power upon the Tribunal. The proposed amendment is of consequential nature.

Clause 54.—This Clause seeks to amend sections 453, 454, 455 and 456 of the Companies Act, 1956 relating to receiver not to be appointed of assets with liquidator, statement of affairs to be made to the Official Liquidator, report by Official Liquidator and custody of company's property, respectively. The Court has been conferred upon certain powers in relation to the matters specified in the said sections. It is proposed to confer the said powers of Court upon the Tribunal.

Clause 55.—This clause seeks to amend section 457 of the Companies Act, 1956. The existing provisions contained in the said section 457 provide that the liquidator in a winding up by the Court shall have certain powers specified in sub-section (2) of that section. Sub-section (1) of the said section specifies the powers which may be exercised by the liquidator in a winding up by the Court with the sanction of the Court. All the powers to be exercised by

the liquidator in the winding up by the Court shall be subject to the control of the Court. It is proposed to confer all the powers of the Court under the aforesaid section upon the Tribunal. It is also proposed to confer certain additional powers upon the liquidator specified in the new sub-sections (2A), (2B), (2C), (2D), (2E), (2F), (2G) and (2H) which are proposed to be inserted in the said section 457.

Clause 56.—This clause seeks to amend sections 458 and 458A of the Companies Act, 1956. The existing provisions contained in the said section 458 empower the Court to pass an order enabling the liquidator to exercise certain powers under sub-section (1) of section 457 without sanction or intervention of the Court. The provisions contained in the said section 458A provides for exclusion of period from the date of commencement of the winding up to the date on which the winding up order is made and one year period following the date of winding up order for the purpose of computing the period of limitation. It is proposed to substitute in the aforesaid sections the references of Court by the Tribunal. These amendments are of consequential nature.

Clause 57.—This clause seeks to substitute section 459 of the Companies Act, 1956. The existing provisions contained in the said section 459 empowers the Official Liquidator with the sanction of the Court to appoint an advocate, attorney or pleader entitled to appear before the Tribunal under the proposed new section 10GD to assist him in the performance of his duties. It is now proposed to provide that the liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners. The proposed substitution of section 459 by a new section is of consequential nature.

Clause 58.—This clause seeks to amend sections 460 to 465 of the Companies Act, 1956 relating to exercise and control of liquidators' powers, books to be kept by liquidator, audit of liquidator's account, control of Central Government over liquidators, appointment and composition of committee of inspection and constitution and proceedings of Committee of inspection. The Court has been conferred upon certain powers under the said sections. It is proposed to confer the said powers upon the Tribunal. These amendments are of consequential nature.

Clause 59.—This clause seeks to amend the heading before section 466 of the Companies Act, 1956 relating to general powers of Court in case of winding up by Court. It is proposed to substitute the word "Tribunal" for the word "Court" in the heading. This amendment is of consequential nature.

Clause 60.—This clause seeks to substitute a new section for section 466 of the Companies Act, 1956. The existing provisions contained in the said section empower the Court to stay all the proceedings in relation to the winding up on an application by the Official Liquidator or any creditor or contributory on such terms and conditions as the Court thinks fit. It is now proposed to confer this power upon the Tribunal. The proposed substitution of section 466 by a new section is of consequential nature.

Clause 61.—This clause seeks to amend sections 467 to 469 of the Companies Act, 1956 relating to settlement of list of contributories and application of assets, delivery of property to liquidator and payment of debts due by contributory and extent of set-off. The Court has been conferred upon certain powers under the said sections. It is now proposed to confer these powers upon the Tribunal. These amendments are of consequential nature.

Clause 62.—This clause seeks to substitute section 470 of the Companies Act, 1956. The provisions contained in the existing section, *inter alia*, provide that the Court may, at any time after making a winding up order, make calls on all or any of the contributories to the extent of their liability for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company. It is proposed to confer this power upon the Tribunal. This amendment is of consequential nature.

Clause 63.—This clause seeks to amend section 471 of the Companies Act, 1956. The existing provisions contained in the said section empower the Court to order any contributory, purchaser or other person from whom any money is due to the company to pay moneys into the public accounts of India or in the Reserve Bank of India instead of to the liquidator. It is

proposed to confer this power upon the Tribunal. This amendment is of consequential nature.

Clause 64.—This clause seeks to substitute section 472 of the Companies Act, 1956. The existing provisions contained in the said section empower the Court that all moneys, bills, hundis, notes and other securities paid or delivered to the Reserve Bank of India in the course of winding up of a company shall be subject in all respects to the orders of the Court. It is proposed to confer this power upon the Tribunal. The proposed substitution of section 472 by a new section is of consequential nature.

Clause 65.—This clause seeks to amend sections 473 to 477 of the Companies Act, 1956 relating to order on contributory to be conclusive evidence, power to exclude creditors not providing in time, adjustment of rights of contributories, power to order costs and power to summon persons suspected of having property of company, etc. It is proposed to confer said powers of Court under the said sections upon the Tribunal. These amendments are of consequential nature.

Clause 66.—This clause seeks to amend section 478 of the Companies Act, 1956. The existing provisions contained in the said section empowers the Court to order public examination of promoters, directors on the report made by the Official Liquidator that in his opinion a fraud has been committed by any person in promotion or formation of the company. It is proposed to confer this power upon the Tribunal.

The existing provisions contained in sub-section (3) of the said section 478 provide that any creditor or contributory may also take part in the examination of promoters, directors, etc., either personally or by any advocate, attorney or pleader entitled to appear before the Court. The existing provisions contained in sub-section (6) of the aforesaid section 478 provide that a person ordered to be examined may at his own cost employ such an advocate, attorney or pleader. It is proposed to provide that the creditor or contributory or such person may appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD.

It is further proposed to substitute the reference of Court by Tribunal. It is also proposed to substitute the reference of Official Liquidator by the Official Liquidator referred to in clause (c) of sub-section (1) of the new section 448 which refers to the Official Liquidator being a whole-time or part-time officer appointed by the Central Government. These amendments are of consequential nature.

Clause 67.—This clause seeks to amend section 479 of the Companies Act, 1956. The existing provisions contained in the said section, *inter alia*, empower the Court to pass an order at any time either before or after making a winding up order to arrest contributory who is about to quit India or otherwise to abscond for the purpose of evading payment of calls. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 68.—This clause proposes to substitute section 480 of the Companies Act, 1956 so as to provide that any power conferred upon the Tribunal by that Act shall be in addition to and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor, for the recovery of any calls or other sums.

Clause 69.—This clause seeks to amend section 481 of the Companies Act, 1956. The existing provisions contained in the said section deal with dissolution of company. This clause provides that if the Court is of the opinion that the liquidator cannot proceed with the winding up of the company for want of funds and assets or the affairs of the company have been completely wound up, it shall make an order that the company be dissolved from the date of the order. It is proposed to confer this power upon the Tribunal. This amendment is of consequential nature.

Clause 70.—This clause seeks to amend section 483 of the Companies Act, 1956. The existing provisions contained in the said section, *inter alia*, empower the Court which passed the winding up order to hear appeals. It is now proposed to provide that the Court

shall hear the appeals against any order made or decision given before the commencement of the Companies (Amendment) Act, 2001. The power of the Court to hear appeals is proposed to be vested upon the National Company Law Appellate Tribunal proposed to be constituted vide clause 6 of the Bill. This amendment is of consequential nature.

Clause 71.—This clause seeks to amend sections 490 and 492 of the Companies Act, 1956. The existing provisions contained in sub-section (2) of the said section 490 provide that any remuneration fixed for the liquidator in case of voluntary winding up shall not be increased in any circumstances with or without the sanction of the Court. Further, the existing provisions contained in sub-section (3) of the said section 492 confer power upon the Court to provide the manner in which the meeting shall be held to fill up the vacancy in office of Liquidator. It is proposed to confer these powers upon the Tribunal. These amendments are of consequential nature.

Clause 72.—This clause seeks to amend sub-section (5) of section 494 of the Companies Act, 1956 relating to power of liquidator to accept shares etc. as consideration for sale of property of company. The provisions relating to winding up of a company subject to the supervision of the Court in the Act, are proposed to be omitted by clause 81 of the Bill. It is proposed to omit the reference of the winding up subject to the supervision of the Court in the said section. This amendment is of consequential in nature. The reference of “Court” in the aforesaid section is also proposed to be substituted by “Tribunal”. This amendment is also of consequential nature.

Clause 73.—This clause seeks to amend section 497 of the Companies Act, 1956. The existing provisions contained in the said section deals with final meeting and dissolution of the company. This clause, *inter alia*, provides that on the report of the Official Liquidator under sub-section (6B) of the said section 497, the Court may either make an order that the company shall stand dissolved or make such other order as the circumstances permit. It is proposed to confer this power upon the Tribunal. It is further proposed to substitute the reference of court by the Tribunal. It is also proposed to substitute the reference of Official Liquidator by the Official Liquidator referred to in clause (c) of sub-section (1) of new section 448 which refers to the Official Liquidator being a whole-time officer appointed by the Central Government. These amendments are of consequential nature.

Clause 74.—This clause seeks to amend sections 502 to 504, 506 and 507 of the Companies Act, 1956 relating to appointment of liquidator, appointment of committee of inspection, fixing of liquidators’ remuneration, power to fill vacancy in office of liquidator and creditors’ voluntary winding up, respectively. The powers conferred upon the Court under the said sections are proposed to be conferred upon the Tribunal. These amendments are of consequential nature.

Clause 75.—This clause seeks to amend section 509 of the Companies Act, 1956. The existing provisions contained in the said section contains provisions relating to final meeting of creditors and dissolution of the company. This clause, *inter alia*, provides that the liquidator shall send to the Registrar and Official Liquidator a copy of account and return in respect of final meeting of creditors and dissolution of the company. It is proposed to substitute the words “Official Liquidator” by “Official Liquidator referred to in clause (c) of sub-section (1) of new section 448” which refers to the Official Liquidator being a whole-time or part-time officer appointed by the Central Government. It is further proposed to confer powers of the Court upon the Tribunal. These amendments are of consequential nature.

Clause 76.—This clause seeks to amend sections 511A and 512 of the Companies Act, 1956 relating to application of provisions regarding statement of affairs to be filed with Official Liquidator in respect of voluntary winding up under section 454 of the Act and powers and functions of Liquidator in voluntary winding up, respectively. The powers conferred upon the Court in the said sections are proposed to be conferred upon the Tribunal. These amendments are of consequential nature.

Clause 77.—This clause seeks to omit section 513 of the Companies Act, 1956 which provides that a body corporate shall not be appointed as a liquidator. Clause 51 of the Bill proposes to substitute section 448 of that Act, *inter alia*, to provide that a body corporate

can be appointed as Official Liquidator. It is, therefore, proposed to omit the said section 513 so that a body corporate may also be appointed as liquidator. The proposed omission of the aforesaid section is of consequential nature.

Clause 78.—This clause seeks to substitute section 515 of the Companies Act, 1956. The existing provisions contained in the section empower the Court to appoint and remove liquidator in voluntary winding up. It is proposed to confer this power upon the Tribunal. The proposed substitution of section 515 by a new section is of consequential nature.

Clause 79.—This clause seeks to amend section 517 of the Companies Act, 1956. The existing provisions contained in the said section empower Court on an appeal to amend, vary, confirm or set aside the arrangement entered into between a company and its creditors. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 80.—This clause seeks to substitute sections 518 and 519 of the Companies Act, 1956 relating to power to apply to Court to have questions determined or power exercised and for public examination for promoters, directors, etc., respectively. The powers vested in these sections upon the Court are proposed to be conferred upon the Tribunal. These amendments are of consequential nature.

Clause 81.—This clause proposes to omit sections 522 to 527 in Companies Act, 1956 relating to winding up subject to supervision of Court. The winding up of a company after the proposed legislation shall not be subject to supervision of Court. It is, therefore, proposed to omit the said sections.

Clause 82.—This clause seeks to amend sections 531 and 531A of the Companies Act, 1956 relating to fraudulent transfer and avoidance of voluntary transfer. The provisions relating to winding up subject to the supervision of the Court in the Companies Act, 1956 are proposed to be omitted by clause 81 of the Bill. It is, therefore, proposed to omit reference of winding up subject to the supervision of the Court in the said section. These amendments are of consequential in nature.

Clause 83.—This clause seeks to amend sections 533 and 535 of the Companies Act, 1956 relating to liabilities and the rights of certain fraudulently preferred persons and disclaimer of onerous property in case of a company which is being wound up. The Court has been conferred certain powers under these sections. It is proposed to substitute reference of Court in the said sections by the Tribunal. These amendments are of consequential nature.

Clause 84.—This clause seeks to amend section 536 of the Companies Act, 1956. The existing provisions contained in the said section empower the Court to transfer shares, property etc. after winding up orders. It is proposed to confer the said power upon the Tribunal. The provisions relating to winding up subject to supervision of Court in the Companies Act, 1956 are proposed to be omitted by clause 81 of the Bill. It is, therefore, proposed to omit reference of winding up subject to supervision of Court. These amendments are of consequential nature.

Clause 85.—This clause seeks to substitute a new section for section 537 of the Companies Act, 1956 relating to avoidance of certain attachments executions etc. in the winding up by or subject to supervision of Court. The provisions relating to winding up subject to supervision of Court in the Companies Act, 1956 are proposed to be omitted by clause 81 of the Bill. It is, therefore, proposed to omit reference of winding up subject to the supervision of Court in the proposed new section. It is also proposed to substitute reference of Court in the said sections by the Tribunal in the proposed new section. The proposed substitution of section 537 by a new section is of consequential nature.

Clause 86.—This clause seeks to amend section 538 of the Companies Act, 1956 relating to the offences by officers of companies in liquidation. The provisions relating to winding up of a company subject to the supervision of the Court in the Companies Act, 1956 are proposed to be omitted by clause 81 of the Bill. It is, therefore, proposed to omit reference of winding up subject to the supervision of the Court in the said section. The reference of Court in the said section is proposed to be substituted by the Tribunal. These amendments are of consequential nature.

Clause 87.—This clause seeks to amend sections 540 and 542 of the Companies Act, 1956 relating to penalty for frauds by officers and liability for fraudulent conduct of business. The Court has been conferred certain powers under the said sections. It is proposed to substitute the reference of Court in the aforesaid sections by the Tribunal. These amendments are of consequential nature.

Clause 88.—This clause seeks to substitute a new section for section 543 of the Companies Act, 1956. The existing provisions contained in the said section, *inter alia*, empowers the Court to assess the damages against delinquent directors, managers, liquidator or officer of the company. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 89.—This clause seeks to amend section 544 of the Companies Act, 1956. The existing provisions contained in the said section, *inter alia*, empower the Court to extend the liability to partners or directors of the company under section 542 relating to fraudulent conduct of business or under section 543 relating to misfeasance or breach of trust. It is proposed to confer these powers upon the Tribunal. This amendment is of consequential nature.

Clause 90.—This clause seeks to amend section 545 of the Companies Act, 1956. The existing provisions contained in the said section, *inter alia*, empower the Court to prosecute the delinquent officers and members of the company for being guilty of offences in relation to the company. It is proposed to confer this power upon the Tribunal. This amendment is of consequential nature.

The provisions relating to winding up of a company subject to supervision of the Court in the Act are proposed to be omitted by clause 81 of the Bill. It is therefore proposed to omit in the said section the reference of winding up subject to supervision of Court. This amendment is of consequential nature.

Clause 91.—This clause seeks to amend section 546 of the Companies Act, 1956. The existing provisions contained in the said section provide that the Liquidator shall exercise certain powers subject to sanction of the Court. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 92.—This clause seeks to amend section 547 of the Companies Act, 1956 relating to notification of the fact that a company is in liquidation. The provisions relating to winding up of a company subject to the supervision of the Court in the Companies Act, 1956 are proposed to be omitted by clause 81 of the Bill. It is, therefore, proposed to substitute in the said section the reference of winding up of a company under the supervision of the Court by the winding up by the Tribunal. This amendment is of consequential nature.

Clause 93.—This clause seeks to amend section 549 of the Companies Act, 1956 relating to inspection of books and papers by creditors and contributories. The provisions relating to winding up of a company subject to the supervision of the Court in the Act are proposed to be omitted by clause 81 of the Bill. It is, therefore, proposed to substitute in the said section the reference of winding up under the supervision of the Court by the winding up by the Tribunal. This amendment is of consequential nature.

Clause 94.—This clause seeks to amend section 550 of the Companies Act, 1956 relating to disposal of books and papers of the company. It is proposed to substitute clause (a) of sub-section (1) of the said section so as to omit the references of winding up subject to the supervision of Court therein and substitute the reference of Court by the Tribunal. Clause (b) of sub-section (3) of the said section, *inter alia*, contains provisions to enable any creditor or contributory of the company to appeal to the Court. It is proposed to amend said sub-section (3) to provide for an appeal to the Tribunal instead of to the Court. These amendments are of consequential nature.

Clause 95.—This clause proposes to amend section 551 of the Companies Act, 1956 relating to information as to pending liquidations. The provisions relating to the winding up of a company subject to the supervision of Court in the Act are proposed to be omitted by clause 81 of the Bill. It is, therefore, proposed to provide winding up by the Tribunal instead

of winding up subject to the supervision of Court. It is also proposed to substitute in the said section the reference of the Court by the Tribunal. These amendments are of consequential nature.

Clause 96.—This clause seeks to amend section 553 of the Companies Act, 1956. The existing provisions contained in the said section, *inter alia*, empower the Court to authorise liquidator to make payments into or out of accounts maintained in any scheduled bank. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 97.—This clause seeks to amend section 555 of the Companies Act, 1956. The existing provisions contained in the said section require that unpaid dividends and undistributed assets of companies being wound up (which are in the hands of liquidator) shall be paid into the Companies Liquidation Account. The Court has been conferred certain powers under the said section. It is proposed to confer the said powers upon the Tribunal.

The provisions relating to winding up of a company subject to supervision of the Court in the Act are proposed to be omitted by clause 81 of the Bill. It is, therefore, proposed to omit in the said section the reference of winding up subject to supervision of the Court.

These amendments are of consequential nature.

Clause 98.—This clause seeks to amend section 556 of the Companies Act, 1956 relating to enforcement of duty of liquidator to take return, etc., and the Court has been conferred upon certain powers in relation thereto. It is proposed to confer the said powers upon the Tribunal. This amendment is of consequential nature.

Clause 99.—This clause seeks to amend the heading before section 557 of the Companies Act, 1956. The heading provides for supplementary powers of Court. It is proposed to substitute the Tribunal for the Court in the said heading. This amendment is of consequential nature.

Clause 100.—This clause seeks to amend section 557 of the Companies Act, 1956. The existing provisions contained in the said section empower the Court, in all matters relating to winding up of a company to ascertain the wishes of creditors or contributories by calling meetings of creditors or contributories. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 101.—This clause seeks to amend section 558 of the Companies Act, 1956. The existing provisions contained in the said section provides for filing affidavit before any Court, Judge or person lawfully authorised to take and receive affidavits. It is proposed to include the Tribunal within the scope of the said section. This amendment is of consequential nature.

Clause 102.—This clause seeks to amend sections 559, 560, 581 and 582 of the Companies Act, 1956 relating to powers of Court to declare dissolution of company void, power of Registrar to strike defunct company off register, staying suits on winding up order and meaning of unregistered company, respectively. The Court has been conferred certain powers under the said sections. It is proposed to confer the said powers upon the Tribunal. These amendments are of consequential nature.

Clause 103.—This clause seeks to amend section 583 of the Companies Act, 1956. The existing provisions contained in the said section empower the Court to order winding up unregistered companies. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 104.—This clause seeks to amend sections 587 to 589 of the Companies Act, 1956 relating to staying of suits, etc., on winding up order, directions as to property in certain cases and provisions of Part cumulative. The Court has been conferred upon certain powers under the said sections. It is proposed to confer the said powers upon the Tribunal. These powers are of consequential nature.

Clause 105.—This clause seeks to amend section 610 of the Companies Act, 1956. The existing provisions contained in sub-section (2) of the said section provide that no process for compelling the production of any document kept by the Registrar shall issue from any Court or the Company Law Board except with the leave of that Court. It is proposed that the powers of the Company Law Board be conferred upon the Tribunal. This amendment is of consequential nature.

Clause 106.—This clause seeks to amend section 614 of the Companies Act, 1956. The existing provisions contained in the said section empower the Company Law Board to enforce the company to deliver returns, etc., to the Registrar. It is proposed to confer this power upon the Tribunal. This amendment is of consequential nature.

Clause 107.—This clause seeks to amend section 621 of the Companies Act, 1956 relating to offences against the Act to be cognizable only on complaint by Registrar or Government. The existing provisions contained in the said section provide that no Court shall take cognizance of any offence under the Act (other than an offence with respect to which proceedings are instituted under section 545) which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing by the Registrar or of a shareholder of the company. Section 545 of the Act relates to prosecution of delinquent officers and members of the company. It is proposed to omit reference of proceedings instituted under section 545 in the said section so as to bring the prosecution of delinquent officers and members of company within the scope of the aforesaid section 621.

Clause 108.—This clause seeks to amend section 621A of the Companies Act, 1956. The existing provisions contained in the said section confer powers upon the Company Law Board to compound the offences. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 109.—This clause seeks to amend section 626 of the Companies Act, 1956. The existing provisions contained in the said section provide that the Court imposing any fine may direct that the whole or any part thereof shall be applied in or towards payment of costs of the proceedings, etc. It is proposed to confer the said power upon the Tribunal also. This amendment is of consequential nature.

Clause 110.—This clause seeks to amend section 627 of the Companies Act, 1956. The existing provisions contained in the section empower the Court to order for production and inspection of books in the circumstances specified in that section. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 111.—This clause seeks to amend section 632 of the Companies Act, 1956. The existing provisions contained in the section empower the Court to order for giving security for costs by the company. It is proposed to confer the said power upon the Tribunal. This amendment is of consequential nature.

Clause 112.—This clause seeks to amend section 634A of the Companies Act, 1956. The existing provisions contained in the said section provide for the enforcement of orders of Company Law Board as if it were a decree of Court. Clause 6 of the Bill proposes to insert sub-section (4) of new section 10FZA in the said Act to provide that any order made by the Tribunal or the Appellate Tribunal may be enforced in the same manner as if it were a decree made by a Court. The powers of the Company Law Board are proposed to be conferred upon the Tribunal. It is therefore proposed to provide that the provisions of the said section 634A shall not apply on or after the commencement of the proposed legislation. The proposed amendment is of consequential nature.

Clause 113.—This clause seeks to amend section 635 of the Companies Act, 1956. The existing provisions contained in the said section deals with enforcement of orders of the Company Law Board by the Court. It is proposed to bring the order of the Tribunal also within the scope of aforesaid section 635. This amendment is of consequential nature.

Clause 114.—This clause seeks to amend section 635B of the Companies Act, 1956 relating to protection of employees during investigation by inspector or pendency of proceeding before Court in certain cases. It is proposed to confer the said power upon the

Tribunal. This amendment is of consequential nature.

It is further proposed to substitute the Tribunal for the Company Law Board occurring in the said section. It is also proposed to substitute the Appellate Tribunal for the Court. These amendments are of consequential nature.

Clause 115.—This clause seeks to substitute a new section for section 637A of the Companies Act, 1956. The existing provisions contained in the said section, *inter alia*, authorise the Company Law Board to accord approval, etc., the subject to the conditions and prescribe fees on applications. It is proposed to confer the said power of the Company Law Board upon the Tribunal. This amendment is of consequential nature.

Clause 116.—This clause seeks to amend heading before section 640A of the Companies Act, 1956. The said heading relates to the computation of time for filing orders of Court or the Company Law Board. It is proposed to substitute the Tribunal for the Company Law Board. The proposed amendment is of consequential nature.

Clause 117.—This clause seeks to substitute a new section for section 640A of the Companies Act, 1956 relating to exclusion of time required in obtaining copies of orders of Court or the Company Law Board. It is proposed to substitute the reference of the Company Law Board in the said section by the Tribunal. This amendment is of consequential nature.

Clause 118.—This clause seeks to amend section 643 of the Companies Act, 1956. The existing provisions contained in the said section empower the Supreme Court to make rules in all matters relating to winding up in consultation with the High Court. It is proposed to substitute the "Tribunal" for the "High Court". This amendment is of consequential nature.

Clause 119.—This clause seeks to insert a new section 647A in the Companies Act, 1956. This clause provides that all proceedings (including proceedings relating to arbitration, compromises, arrangements and reconstruction and winding up of a company) pending before the commencement of the Companies (Amendment) Act, 2001 before any District Court or High Court under the Companies Act, 1956 or the Insurance Act, 1938 or any other law for the time being in force except the Banking Regulation Act, 1949, shall stand transferred on such commencement to the Tribunal. However the cases relating to winding up of companies subject to supervision of Court which, if already commenced, shall continue to be conducted by the High Court.

Clause 120.—This clause seeks to substitute references of Company Law Board by the references of Tribunal in Schedule XI to the Companies Act, 1956. This amendment is of consequential nature.

Clause 121.—This clause seeks to amend the enactment specified in the Schedule to the Bill. It is proposed to amend certain sections in the Insurance Act, 1938 to provide that an insurance company shall be wound up by the Tribunal instead of the High Court. This amendment is of consequential nature.

Clause 122.—This clause proposes to insert a new section 651A in the Companies Act, 1956 to provide that any reference to the winding up of a company by a Court or a High Court or winding up of a company subject to supervision of a Court or a High Court in any other law except in the Banking Regulation Act, 1949, shall be construed as winding up of a company by the Tribunal in accordance with the provisions of this Act. This clause also provides that any reference to the Company Law Board in any other law shall be construed as a reference to the Tribunal.

FINANCIAL MEMORANDUM

Clause 5 of the Bill provides that the Board of Company Law Administration constituted under sub-section (1) of Section 10E of the Companies Act shall stand dissolved.

Clause 6 of the Bill provides for setting up of a National Company Law Tribunal and also an Appellate Tribunal which will consist of a Chairperson, who is or has been a Judge of Supreme Court or Chief Justice of a High Court and two members. There shall be maximum sixty two members in the National Company Law Tribunal. The Principal Bench of the Tribunal will have a President who will be Judge of a High Court. The Tribunal will be having ten Special Benches with three members in each Bench. The Tribunal will look after the entire work, which is presently being looked after by Company Law Board, Board for Industrial Financial Reconstruction (BIFR), Appellate Authority for Industrial Financial Reconstruction (AAIFR) as these organisations will dissolved on creation of the National Company Law Tribunal. The creation of posts of Chairman or Appellate Tribunal, President of Tribunal and Members and Officers and Staff will involve expenditure as follows:

Name of Establishment	Rs. in lakh Recurring (per annum)	Rs. in lakh Non-Recurring (per annum)	Rs. in lakh Total
Establishment of Appellate Tribunal.	62.14	24.26	86.40
Establishment of Principal Bench at Delhi and Nine Benches at nine different places.	656.00	190.00	846.00
Grand Total	718.14	214.26	932.40

2. The Bill will not involve any other expenditure or recurring or non-recurring nature except routine type of expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill to insert new section 10FA of the Act relating to dissolution of Company Law Board on and from the commencement of the Companies (Amendment) Act, 2001. It provides that on the dissolution of the Company Law Board, the monies standing to the credit of Provident Fund, superannuation, welfare or other fund of the officers and other employees of the Board shall stand transferred to the Central Government and the same shall be dealt with by that Government in such manner as may be prescribed by rules.

2. Clause 6 of the Bill seeks to insert new Parts IB and IC relating to constitution of National Company Law Tribunal and Appellate Tribunal which, inter alia, proposes to insert :

- (a) new section 10FF which confers powers upon the President of the Tribunal to exercise financial and administrative powers in accordance with the rules made by the Central Government;
- (b) new section 10FG to provide that the salary and allowances and other terms and conditions of service of the President (other than a sitting High Court Judge) and Members of the Tribunal shall be in accordance with the rules made by the Central Government;
- (c) new section 10FK to provide that the salaries and allowances and other conditions of service of the officers and other employees of the Tribunal shall be in accordance with the rules made by the Central Government;
- (d) new section 10FQ to provide that the form and the fee to be accompanied with the appeal to the Appellate Tribunal shall be in accordance with the rules made by the Central Government;
- (e) new section 10FV to provide that the procedure for investigation of misbehaviour or incapacity of the Chairperson or a Member of the Appellate Tribunal shall be in accordance with the rules made by the Central Government;
- (f) new section 10FW to provide that the other terms and conditions of service of the Chairperson and Members of the Appellate Tribunal including travelling allowances, house rent allowance, conveyance facilities, sumptuary allowance and medical facilities shall be in accordance with the rules made by the Central Government;
- (g) new section 10ZA to provide that powers in addition to the powers specified in that section which may be exercised by the Appellate Tribunal shall be in accordance with the rules made by the Central Government;
- (h) new section 10GAA to provide that the salary and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be in accordance with the rules made by the Central Government.

3. Clause 35 seeks to insert new Part VIA relating to reference to the Tribunal where an industrial company has become a sick. According to new section 424A the Board of Directors of a sick industrial company shall make a reference to the Tribunal along with an application containing such particulars which may be prescribed by rules made by the Central Government. According to new section 424D a copy of the sanctioned scheme under that section shall be filed with Registrar of Companies within the time limit prescribed by rules made by the Central Government.

4. Clause 45 of the Bill seeks to insert new sections 441A, 441B, 441C, 441D, 441E and 441F in Companies Act, 1956 relating to levy and collection of cess on turnover or gross receipts, whichever is higher of the company. According to new section 441A every company shall furnish in such form as may be prescribed by the rules made by Central Government, the details of its turnover and gross receipts with the payment of cess. According to new section 441E, every company shall furnish such statistical and other information in such form and within such period as may be prescribed by rules by the Central Government. According to new section 441F, if a company fails to pay cess to the Central Government, the same shall be recovered by the Tribunal in the manner prescribed by rules made by the Central Government.

5. Clause 51 of the Bill seeks to substitute a new section for section 448 of the Companies Act, 1956 in respect of appointment of Official Liquidator. If a whole time or a part time officer is appointed as the Official Liquidator of a company being wound up by the company, the terms and conditions for appointment of such Official Liquidator and the remuneration payable to him shall be in accordance with the rules made by the Central Government. If one or more Deputy Official Liquidators or Assistant Official Liquidators are appointed by the Central Government, the terms and conditions for such appointment and remuneration payable to them shall also be in accordance with the rules made by the Central Government.

6. Clause 55 of the Bill seeks to insert sub-sections (2A) to (2H) in section 457 of the Companies Act, 1956 which relates to powers of Liquidator. According to new sub-section (2D), the Official Liquidator shall serve a notice in the manner prescribed by rules made by the Central Government on the persons to furnish statement of affairs under sections 439A and 454. According to new sub-section (2G), the advertisement inviting bids shall be in accordance with other terms and conditions prescribed by rules made by the Central Government.

7. Clause 60 of the Bill seeks to substitute section 466 of the Act which relates to power of Tribunal to stay winding up. According to this section a copy of every order made under that section shall be immediately forwarded by the company to the Registrar of Companies in accordance with the rules made by the Central Government.

8. Clause 80 of the Bill seeks to substitute sections 518 and 519 of the Act which deals with power to apply to Tribunal to have questions determined or powers exercised. According to sub-section (4) a copy of the order staying the proceedings of the winding up shall be forwarded immediately by the company or otherwise as may be prescribed; to the Registrar of Companies.

9. Clause 115 of the Bill seeks to substitute section 637A of the Act which deals with power of the Central Government or Tribunal to accord approval etc. subject to conditions and to prescribe fees or application. According to sub-section (2), of the said section the application which shall be made to the Central or to the Tribunal under any provisions of this Act in respect of any approval, sanction, consent, confirmation or recognition to be accorded shall be accompanied by such fees as may be prescribed by rules made by the Central Government.

10. The matters in respect of which rules may be made by the Central Government are generally matters of procedure and administrative detail and it is meet practicable to provide them in the Bill itself. The delegation of Legislative Power is, therefore, of a normal character.

II

BILL NO. 81 OF 2001

A Bill to repeal the Sick Industrial Companies (Special Provisions) Act, 1985.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Sick Industrial Companies (Special Provisions) Repeal Act, 2001.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

1 of 1986. (a) "Appellate Authority" means the Appellate Authority for Industrial and Financial Reconstruction constituted under section 5 of the Sick Industrial Companies (Special Provisions) Act, 1985;

1 of 1986. (b) "Board" means the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985;

1 of 1986. (c) words and expressions used herein and not defined but defined in the Sick Industrial Companies (Special Provisions) Act, 1985, shall have the meanings respectively assigned to them in that Act.

Repeal of Act
I of 1986 and
dissolution of
Appellate
Authority and
Board.

3. The Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as the repealed enactment) is hereby repealed and the Appellate Authority and the Board stand dissolved.

Consequential
provisions.

4. On the dissolution of the Appellate Authority and the Board,—

(a) (i) the persons appointed as Chairman and Member of the Appellate Authority or the Board; and

(ii) every other person appointed by the Central Government, Appellate Authority or the Board,

and holding office as such immediately before the commencement of this Act, shall vacate his office and no such Chairman, Member or other person shall be entitled to claim any compensation for premature termination of the term of his office or of any contract of service:

Provided that every officer or employee who has been, immediately before the dissolution of the Appellate Authority or the Board, appointed on deputation basis to the Appellate Authority or the Board, shall stand reverted to his parent cadre, Ministry or Department, as the case may be:

Provided further that every officer or employee who has been, immediately before the dissolution of the Appellate Authority or the Board, employed on regular basis by the Appellate Authority or the Board, shall become, on and from the date of such dissolution, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Appellate Authority or the Board had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee, employed in the Appellate Authority or the Board, to the Central Government, shall not entitle such officer or employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

14 of 1947.

Provided also that where the Appellate Authority or the Board has established a provident fund, superannuation, welfare or other fund for the benefit of the officers and employees employed in the Appellate Authority or the Board, the monies relatable to the officers and employees whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Appellate Authority or the Board, to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by that Government in such manner as may be prescribed;

(b) any appeal preferred to the Appellate Authority or any reference made to the Board or any inquiry pending before the Board or any other authority or any proceeding of whatever nature pending before the Appellate Authority or the Board immediately before the commencement of this Act shall stand abated;

(c) the balance of all monies (including any fee) received by, or advanced to the Appellate Authority or the Board, as the case may be, and not spent by it before the commencement of this Act shall, on the commencement of this Act, stand transferred to and vest in the Central Government and shall be utilised for the purposes of clauses (e) and (f);

(d) all property of whatever kind owned by, or vested in, the Appellate Authority or the Board, as the case may be, and not spent by it before the commencement of this Act shall, on the commencement of this Act, stand transferred to, and shall vest in the Central Government;

(e) all liabilities and obligations of whatever kind incurred by the Appellate Authority or the Board and subsisting immediately before the commencement of this Act shall, on and from the commencement of this Act, be deemed to be the liabilities or obligations, as the case may be, of the Central Government; and any proceeding or cause of action, pending or existing immediately before the commencement of this Act by or against the Appellate Authority or the Board in relation to such liability or obligation may, as from the commencement of this Act, be continued or enforced by or against the Central Government;

(f) all monies vested in the Central Government under clause (c) shall, after deducting the amount incurred for discharging the liabilities and obligations referred to in that clause be refunded by the Central Government to the person to whom such amount is due.

5. (1) The repeal by this Act of the repealed enactment shall not—

Saving.

(a) affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

(b) affect the previous operation of the repealed enactment or anything duly done or suffered thereunder;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment;

(d) affect any order made by the Board for preparation and sanction of the schemes;

(e) affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

(f) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed enactment, affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such privilege, forfeiture or punishment may be imposed as if this Act had not been passed;

(g) affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from the repealed enactment;

(h) revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

(2) Save as otherwise provided in section 4 and in sub-section (1) of this section, the mention of particular matters in the said section and sub-section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeal.

Power to make
rules.

6. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which the monies standing to the credit of provident fund, superannuation, welfare or other fund of officers and employees on their transfer to the Central Government, shall be dealt with by that Government under the fourth proviso to clause (a) of section 4;

(b) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECT AND REASONS

The Sick Industrial Companies (Special Provisions) Act (SICA), 1985 was enacted to tackle the problem of industrial sickness. Various steps including amendments in the SICA and strengthening of the Board for Industrial and Financial Reconstruction (BIFR), over the last 15 years have not led to a regime and situation satisfactory enough to either check the problem of industrial sickness or find timely solutions for restructuring of the corporate sector. Many deficiencies were noticed in the operation of the SICA which are as follows:—

- (a) restrictive definition of sickness and belated cognizance thereof;
- (b) slow pace of BIFR intervention;
- (c) excessive protection to sick industries under section 22 of the SICA providing for automatic stay of all proceedings;
- (d) necessity of consensus amongst secured creditors before finalisation of revival scheme;
- (e) lack of monitoring of sanctioned revival schemes; and
- (f) delays in winding up of sick companies.

2. In view of the problems noticed in the BIFR mechanism, the Central Government has been considering various alternatives including repeal of the SICA and enacting a separate legislation to address the problems of industrial sickness more effectively.

3. However, the task of rehabilitating sick industrial units is proposed to be vested in the National Company Law Tribunal proposed to be constituted by amending the Companies Act, 1956 on the basis of the recommendations of Justice Eradi Committee. Separate action is being initiated by the Department of Company Affairs to introduce the Companies (Amendment) Bill, 2001 for giving effect to the aforesaid recommendations.

4. The main features of the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001 are as follows:—

- (i) the Bill seeks to repeal the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (ii) the Bill envisages dissolution of the Board for Industrial and Financial Reconstruction (BIFR) and Appellate Authority for Industrial and Financial Reconstruction (AAIFR); and
- (iii) all proceedings pending before BIFR and AAIFR prior to their dissolution shall stand abated.

5. The Bill seeks to achieve the above objects.

NEW DELHI:
The 23rd August, 2001.

YASHWANT SINHA.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill empowers the Central Government to make rules to provide for, among other matters, the manner in which money standing to the credit of provident fund, superannuation, welfare or other fund pertaining to officers and employees of BIFR and AAIFR on their transfer to the Central Government, shall be dealt with by that Government under the fourth proviso to sub-clause (ii) of clause (a) of section 4.

2. The matters in respect of which rules may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power involved is of a normal character.

III

BILL No. 82 OF 2001

A Bill to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. (1) This Act may be called the Electricity Act, 2001.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires,—

(1) “Appellate Tribunal” means the Appellate Tribunal for Electricity established under section 110;

Short title,
extent and
commencement.

Definitions.

(2) "appointed date" means such date as the Central Government may, by notification, appoint;

(3) "area of supply" means the area within which a distribution licensee is authorised by his licence to supply electricity;

(4) "Appropriate Commission" means the Central Regulatory Commission referred to in sub-section (1) of section 76 or the State Regulatory Commission referred to in section 82 or the Joint Commission referred to in section 83, as the case may be;

(5) "Appropriate Government" means,—

(a) the Central Government,—

(i) in respect of a generating company wholly or partly owned by it;

(ii) in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;

(iii) in respect of the National Load Despatch Centre and Regional Load Despatch Centre;

(iv) in relation to any works or electric installation belonging to it or under its control;

(b) in any other case, the State Government having jurisdiction under this Act;

(6) "Authority" means the Central Electricity Authority referred to in sub-section (1) of section 70;

(7) "Board" means a State Electricity Board, constituted before the commencement of this Act, under sub-section (1) of section 5 of the Electricity (Supply) Act, 1948;

54 of 1948.

(8) "Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use;

(9) "Central Commission" means the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76;

(10) "Central Transmission Utility" means any Government company which the Central Government may notify under sub-section (1) of section 38;

(11) "Chairperson" means the Chairperson of the Authority or Appropriate Commission or the Appellate Tribunal, as the case may be;

(12) "Cogeneration" means a process which simultaneously produces two or more forms of useful energy (including electricity);

(13) "company" means a company formed and registered under the Companies Act, 1956 and includes any body corporate under a Central, State or Provincial Act;

1 of 1956.

(14) "conservation" means any reduction in consumption of electricity as a result of increase in the efficiency in supply and use of electricity;

(15) "consumer" means any person who is supplied with electricity by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

(16) "dedicated transmission lines" means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants to any transmission lines or generating stations, as the case may be;

(17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

(18) "distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected;

(19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;

(20) "electric line" means any line which is used for carrying electricity for any purpose and includes—

(a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and

(b) any apparatus connected to any such line for the purpose of carrying electricity;

(21) "Electrical Inspector" means a person appointed as such by the Appropriate Government under sub-section (1) of section 157 and also includes Chief Electrical Inspector;

(22) "electrical plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include —

(a) an electric line; or

(b) a meter used for ascertaining the quantity of electricity supplied to any premises; or

(c) an electrical equipment, apparatus or appliance under the control of a consumer;

(23) "electricity" means electrical energy—

(a) generated, transmitted, supplied or traded for any purpose; or

(b) used for any purpose except the transmission of a message;

(24) "Electricity Supply Code" means the Electricity Supply Code specified under section 50;

(25) "electricity system" means a system under the control of a generating company or licensee, as the case may be, having one or more—

(a) generating stations; or

(b) transmission lines; or

(c) electric lines and sub-stations,

and when used in the context of a State or the Union, the entire electricity system within the territories thereof;

(26) "electricity trader" means a person who has been granted a licence to undertake trading in electricity under section 12;

(27) "franchisee" means a person authorised by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply;

(28) "generating company" means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;

(29) "generate" means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;

(30) "generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switch-gear, switch yard, cables or other appurtenant equipment, if any used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;

(31) "Government company" shall have the meaning assigned to it in section 617 of the Companies Act, 1956;

1 of 1956.

(32) "grid" means the high voltage backbone system of inter-connected transmission lines, sub-station and generating plants;

(33) "Grid Code" means the Grid Code specified by the Central Commission under clause (h) of sub-section (1) of section 79;

(34) "Grid Standards" means the Grid Standards specified under clause (d) of section 73 by the Authority;

(35) "high voltage line" means an electric line or cable of a nominal voltage as may be specified by the Authority from time to time;

(36) "inter-State transmission system" includes—

(i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;

(ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;

(iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility;

(37) "intra-State transmission system" means any system for transmission of electricity other than an inter-State transmission system;

(38) "licence" means a licence granted under section 14;

(39) "licensee" means a person who has been granted a licence under section 14;

(40) "line" means any wire, cable, tube, pipe, insulator, conductor or other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity and includes any line which surrounds or supports, or is surrounded or supported by or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

(41) "local authority" means any Nagar Panchayat, Municipal Council, municipal corporation, Panchayat constituted at the village, intermediate and district levels, body of port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund;

(42) "main" means any electric supply-line through which electricity is, or is intended to be, supplied;

(43) "Member" means the Member of the Appropriate Commission or Authority or Joint Commission, or the Appellate Tribunal, as the case may be, and includes the Chairperson of such Commission or Authority or Appellate Tribunal;

(44) "National Electricity Plan" means the National Electricity Plan notified under sub-section (4) of section 3;

(45) "National Load Despatch Centre" means the Centre established under sub-section (1) of section 26;

(46) "notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(47) "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

(48) "overhead line" means an electric line which is placed above the ground and in the open air but does not include live rails of a traction system;

(49) "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;

(50) "power system" means all aspects of generation, transmission, distribution and supply of electricity and includes one or more of the following, namely:—

- (a) generating stations;
- (b) transmission or main transmission lines;
- (c) sub-stations;
- (d) tie-lines;
- (e) load despatch activities;
- (f) mains or distribution mains;
- (g) electric supply-lines;
- (h) overhead lines;
- (i) service lines;
- (j) works;

(51) "premises" includes any land, building or structure;

(52) "prescribed" means prescribed by rules made by the Appropriate Government under this Act;

(53) "public lamp" means an electric lamp used for the lighting of any street;

(54) "real time operation" means action to be taken at a given time at which information about the electricity system is made available to the concerned Load Despatch Centre;

(55) "Regional Power Committee" means a committee established by resolution by the Central Government for a specified region for facilitating the integrated operation of the power systems in that region;

(56) "Regional Load Despatch Centre" means the Centre established under sub-section (1) of section 27;

(57) "regulations" means regulations made under this Act;

(58) "repealed laws" means the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 repealed by section 180; 9 of 1910.
54 of 1948.
14 of 1998.

(59) "rules" means rules made under this Act;

(60) "Schedule" means the Schedule to this Act;

(61) "service-line" means any electric supply-line through which electricity is, or is intended to be, supplied—

(a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or

(b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;

(62) "specified" means specified by regulations made by the Appropriate Commission or the Authority, as the case may be, under this Act;

(63) "stand alone system" means the electricity system set-up to generate power and distribute electricity in a specified area without connection to the grid;

(64) "State Commission" means the State Electricity Regulatory Commission constituted under sub-section (1) of section 82 and includes a Joint Commission constituted under sub-section (1) of section 83;

(65) "State Grid Code" means the State Grid Code specified under clause (h) of sub-section (1) of section 86;

(66) "State Load Despatch Centre" means the centre established under sub-section (1) of section 31;

(67) "State Transmission Utility" means the Board or the Government company specified as such by the State Government under sub-section (1) of section 39;

(68) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way and also the roadway and footway over any public bridge or causeway;

(69) "sub-station" means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, converters, switch-gears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site thereof;

(70) "supply", in relation to electricity, means the sale of electricity to a licensee or consumer;

(71) "trading" means purchase of electricity for resale thereof and the expression "trade" shall be construed accordingly;

(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works and the operating staff thereof;

(73) "transmission licensee" means a licensee authorised to establish or operate transmission lines;

(74) "transmit" means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly;

(75) "utility" means the electric lines or electrical plant, and includes all lands, buildings, works and materials attached thereto belonging to any person acting as a generating company or licensee under the provisions of this Act;

(76) "wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62;

(77) "works" includes electric line, and any building, plant, machinery, apparatus and any other thing of whatever description required to transmit, distribute or supply electricity to the public and to carry into effect the objects of a licence or sanction granted under this Act or any other law for the time being in force.

PART II

NATIONAL ELECTRICITY POLICY AND PLAN

3. (1) The Central Government shall, from time to time, prepare the National Electricity Policy (including tariff policy), in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources including conservation thereof and the use of renewable sources of energy.

National
Electricity
Policy and
Plan.

(2) The Central Government shall publish the National Electricity Policy from time to time.

(3) The Central Government may, from time to time in consultation with the State Governments, review or revise, the National Electricity Policy referred to in sub-section (1).

(4) The Authority shall prepare a National Electricity Plan in accordance with the National Electricity Policy and notify such plan once in five years:

Provided that the Authority while preparing the National Electricity Plan shall publish the draft National Electricity Plan and invite suggestions and objections thereon from licensees, generating companies and the public within such time as may be prescribed.

(5) The Authority may review or revise the National Electricity Plan in accordance with the National Electricity Policy.

4. The Central Government shall, after consultation with the State Governments, prepare and notify a national policy, permitting stand alone systems (including those based on renewable sources of energy and other non-conventional sources of energy) for rural areas.

National
policy on
stand alone
systems for
rural areas
and non-
conventional
energy
systems.

5. The Central Government shall also formulate a national policy, in consultation with the State Governments and the State Commissions, for rural electrification and for bulk purchase of power and management of local distribution in rural areas through Panchayat Institutions, users' associations, co-operative societies, non-governmental organisations or franchisees.

National
policy on
electrification
and local
distribution in
rural areas.

6. The Appropriate Government shall endeavour to supply electricity to all areas including villages and hamlets.

Obligations to
supply
electricity to
rural areas.

PART III

GENERATION OF ELECTRICITY

Generating company and requirement for setting up of generating station.

7. Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.

Hydro-electric generation.

8. (1) Notwithstanding anything contained in section 7, any generating company intending to set-up a hydro-generating station shall obtain approval of the Appropriate Government.

(2) Every company referred to in sub-section (1) shall prepare and submit to the Authority for concurrence, a scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government from time to time, by notification.

(3) The Authority shall, before concurring in any scheme submitted to it under sub-section (2) have particular regard to, whether or not in its opinion,—

(a) the proposed river-works will prejudice the prospects for the best ultimate development of the river or its tributaries for power generation, consistent with the requirements of drinking water, irrigation, navigation, flood-control, or other public purposes, and for this purpose the Authority shall satisfy itself, after consultation with the State Government, the Central Government, or such other agencies as it may deem appropriate, that an adequate study has been made of the optimum location of dams and other river-works;

(b) the proposed scheme meets, the norms regarding dam design and safety and for this purpose, the Authority shall consult the appropriate agencies specified by the Central Government.

(4) Where a multi-purpose scheme for the development of any river in any region is in operation, the State Government and the generating company shall co-ordinate their activities with the activities of the persons responsible for such scheme in so far as they are inter-related.

Captive generation.

9. (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

Duties of generating companies.

10. (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.

(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.

(3) Every generating company shall—

(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;

(b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.

11. (1) The Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government.

Direction to
generating
companies.

Explanation.—For the purposes of this section, the expression "extraordinary circumstances" means circumstances arising out of threat to security of the State, public order or a natural calamity.

(2) The Appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate.

PART IV

LICENSING

12. No person shall—

(a) transmit electricity; or

(b) distribute electricity; or

(c) undertake trading in electricity,

Authorised
persons to
transmit,
supply, etc.,
electricity.

unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13.

13. The Appropriate Commission may, on the recommendations, of the Appropriate Government, in the public interest, direct, by notification that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, the provisions of section 12 shall not apply to any local authority, Panchayat Institution, users' association, co-operative societies, non-governmental organisations, or franchisees:

Power to
exempt.

Provided that where such direction results in setting up of an electric line or electrical plant which would compete with any existing distribution system, such direction shall be issued having due regard to its effect on the distribution licensee owning such distribution system.

14. The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person—

Grant of
licence.

(a) to transmit electricity as a transmission licensee; or

(b) to distribute electricity as a distribution licensee; or

(c) to undertake trading in electricity as an electricity trader,
in any area as may be specified in the licence:

Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:

Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:

Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:

Provided also that the grant of licence under this section shall not in any way hinder or restrict the grant of licence to another person within the same area:

Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:

Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity:

Provided also that a distribution licensee shall not require a licence to undertake trading in electricity.

Procedure for
grant of
licence.

15. (1) Every application under section 14 shall be made in such form and in such manner as may be specified by the Appropriate Commission and shall be accompanied by such fee as may be prescribed.

(2) Any person who has made an application for grant of a licence shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified and a licence shall not be granted—

(i) until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it:

Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of publication of the notice as aforesaid;

(ii) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government.

(3) A person intending to act as a transmission licensee shall, immediately on making the application, forward a copy of such application to the Central Transmission Utility or the State Transmission Utility, as the case may be.

(4) The Central Transmission Utility or the State Transmission Utility, as the case may be, shall, within thirty days after the receipt of the copy of the application referred to in sub-section (3), send its recommendations, if any, to the Appropriate Commission:

Provided that such recommendations shall not be binding on the Commission.

(5) Before granting a licence under section 14, the Appropriate Commission shall—

(a) publish a notice in two daily newspapers, one of which shall be in English, stating—

(i) the name of the person to whom it proposes to issue the licence;

(ii) the time, not being less than thirty days from the date of publication of the notice, within which the suggestions or objections with respect to the proposed licence may be made;

(b) consider all suggestions or objections and the recommendations, if any, of the Central Transmission Utility or the State Transmission Utility, as the case may be.

(6) Where a person makes an application under sub-section (1) of section 14 to act as a licensee, the Appropriate Commission shall, as far as practicable, within ninety days after receipt of such application,—

(a) issue a licence subject to the provisions of this Act and the rules and regulations made thereunder; or

(b) reject the application for reasons to be recorded in writing if such application does not conform to the provisions of this Act or the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

(7) The Appropriate Commission shall, immediately after issue of a licence, forward a copy of the licence to the Appropriate Government, Authority, local authority, and to such other person as the Appropriate Commission considers necessary.

(8) A licence shall continue to be in force for such period as may be mentioned in the licence.

16. The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence:

Conditions of
licence.

Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second and third provisos to section 14 after the expiry of one year from the commencement of this Act.

17. (1) No licensee shall, without prior approval of the Appropriate Commission,—

Licensee not
to do certain
things.

(a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or

(b) merge his utility with the utility of any other licensee:

Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situate in a State other than the State in which the utility referred to in clause (a) or clause (b) is situate.

(2) Every licensee shall, before obtaining the approval under sub-section (1), give not less than one month's notice to every other licensee who transmits or distributes, electricity in the area of such licensee who applies for such approval.

(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.

(4) Any agreement relating to any transaction specified in sub-section (1) or sub-section (3), unless made with, the prior approval of the Appropriate Commission, shall be void.

Amendment
of licence.

18. (1) Where in its opinion the public interest so permits, the Appropriate Commission, may, on the application of the licensee or otherwise, make such alterations and amendments in the terms and conditions of his licence as it thinks fit:

Provided that no such alterations or amendments shall be made except with the consent of the licensee unless such consent has, in the opinion of the Appropriate Commission, been unreasonably withheld.

(2) Before any alterations or amendments in the licence are made under this section, the following provisions shall have effect, namely:—

(a) where the licensee has made an application under sub-section (1) proposing any alteration or modifications in his licence, the licensee shall publish a notice of such application with such particulars and in such manner as may be specified;

(b) in the case of an application proposing alterations or modifications in the area of supply comprising the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Government for defence purposes, the Appropriate Commission shall not make any alterations or modifications except with the consent of the Central Government;

(c) where any alterations or modifications in a licence are proposed to be made otherwise than on the application of the licensee, the Appropriate Commission shall publish the proposed alterations or modifications with such particulars and in such manner as may be specified;

(d) the Appropriate Commission shall not make any alterations or modifications unless all suggestions or objections received within thirty days from the date of the first publication of the notice have been considered.

Revocation
of licence.

19. (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely:—

(a) where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;

(b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;

(c) where the licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Appropriate Commission may have granted therefor –

(i) to show, to the satisfaction of the Appropriate Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence; or

(ii) to make the deposit or furnish the security, or pay the fees or other charges required by his licence;

(d) where in the opinion of the Appropriate Commission the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence.

(2) Where in its opinion the public interest so requires, the Appropriate Commission may, on application, or with the consent of the licensee, revoke his licence as to the whole or any part of his area of distribution or transmission or trading upon such terms and conditions as it thinks fit.

(3) No licence shall be revoked under sub-section (1) unless the Appropriate Commission has given to the licensee not less than three months' notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.

(4) The Appropriate Commission may, instead of revoking a licence under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms and conditions so imposed shall be binding upon and be observed by the licensee and shall be of like force and effect as if they were contained in the licence.

(5) Where the Commission revokes a licence under this section, it shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect.

(6) Where the Appropriate Commission has given notice for revocation of licence under sub-section (5), without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under this Act, the licensee may, after prior approval of that Commission, sell his utility to any person who is found eligible by that Commission for grant of licence.

20. (1) Where the Appropriate Commission revokes under section 19 the licence of any licensee, the following provisions shall apply, namely:—

Sale of utilities
of licensees.

(a) the Appropriate Commission shall invite applications for acquiring the utility of the licensee whose licence has been revoked and determine which of such applications should be accepted, primarily on the basis of the highest and best price offered for the utility;

(b) the Appropriate Commission may, by notice in writing, require the licensee to sell his utility and thereupon the licensee shall sell his utility to the person (hereafter in this section referred to as the "purchaser") whose application has been accepted by that Commission;

(c) all the rights, duties, obligations and liabilities of the licensee, on and from the date of revocation of licence or on and from the date, if earlier, on which the utility of the licensee is sold to a purchaser, shall absolutely cease except for any liabilities which have accrued prior to that date;

(d) the Appropriate Commission may make such interim arrangements in regard to the operation of the utility as may be considered appropriate including the appointment of Administrators;

(e) the Administrator appointed under clause (d) shall exercise such powers and discharge such functions as the Appropriate Commission may direct.

(2) Where a utility is sold under sub-section (1), the purchaser shall pay to the licensee the purchase price of the utility in such manner as may be agreed upon.

(3) Where the Appropriate Commission issues any notice under sub-section (1) requiring the licensee to sell the utility, it may, by such notice, require the licensee to deliver the utility, and thereupon the licensee shall deliver on a date specified in the notice, the utility to the designated purchaser on payment of the purchase price thereof.

(4) Where the licensee has delivered the utility referred to in sub-section (3) to the purchaser but its sale has not been completed by the date fixed in the notice issued under that sub-section, the Appropriate Commission may, if it deems fit, permit the intending purchaser to operate and maintain the utility system pending the completion of the sale.

Vesting of
utility in
purchaser.

21. Where a utility is sold under section 20 or section 24, then, upon completion of the sale or on the date on which the utility is delivered to the intending purchaser, as the case may be, whichever is earlier—

(a) the utility shall vest in the purchaser or the intending purchaser, as the case may be, free from any debt, mortgage or similar obligation of the licensee or attaching to the utility:

Provided that any such debt, mortgage or similar obligation shall attach to the purchase money in substitution for the utility; and

(b) the rights, powers, authorities, duties and obligations of the licensee under his licence shall stand transferred to the purchaser and such purchaser shall be deemed to be the licensee.

Provisions
where no
purchase
takes place.

22. If the utility is not sold in the manner provided under section 20 or section 24, the licensee referred to in that section may dispose of the utility in such manner as he may think fit:

Provided that, if the licensee does not dispose of the utility, within a period of six months from the date of revocation, under section 20 or section 24, the Appropriate Commission may cause the works of the licensee in, under, over, along, or across any street or public land to be removed and every such street or public land to be reinstated, and recover the cost of such removal and reinstatement from the licensee.

Directions to
licensees.

23. If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof.

Suspension of
distribution
licence and
sale of utility.

24. (1) If at any time the Appropriate Commission is of the opinion that a distribution licensee—

(a) has persistently failed to maintain uninterrupted supply of electricity conforming to standards regarding quality of electricity to the consumers; or

(b) is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(c) has persistently defaulted in complying with any direction given by the Appropriate Commission under this Act; or

(d) has broken the terms and conditions of licence,

and circumstances exist which render it necessary for it in public interest so to do,

the Appropriate Commission may, for reasons to be recorded in writing, suspend, for a period not exceeding one year, the licence of the distribution licensee and appoint an Administrator to discharge the functions of the distribution licensee in accordance with the terms and conditions of the licence:

Provided that before suspending a licence under this section, the Appropriate Commission shall give a reasonable opportunity to the distribution licensee to make representations against the proposed suspension of licence and shall consider the representations, if any, of the distribution licensee.

(2) Upon suspension of licence under sub-section (1), the utilities of the distribution licensee shall vest in the Administrator for a period not exceeding one year or up to the date on which such utility is sold in accordance with the provisions contained in section 20, whichever is later.

(3) The Appropriate Commission shall, within one year of appointment of the Administrator under sub-section (1), either revoke the licence in accordance with the provisions contained in section 19 or revoke suspension of the licence and restore the utility to the distribution licensee whose licence had been suspended, as the case may be.

(4) In a case where the Appropriate Commission revokes the licence under sub-section (3), the utility of the distribution licensee shall be sold within a period of one year from the date of revocation of the licence in accordance with the provisions of section 20 and the price after deducting the administrative and other expenses on sale of utilities be remitted to the distribution licensee.

PART V

TRANSMISSION OF ELECTRICITY

Inter-State transmission

25. For the purposes of this Part, the Central Government may, make region-wise demarcation of the country, and, from time to time, make such modifications therein as it may consider necessary for the efficient, economical and integrated transmission and supply of electricity, and in particular to facilitate voluntary inter-connections and co-ordination of facilities for the inter-State, regional and inter-regional generation and transmission of electricity.

Inter-State, regional and inter-regional transmission.

26. (1) The Central Government may establish a Centre at the national level, to be known as the National Load Despatch Centre for optimum scheduling and despatch of electricity among the Regional Load Despatch Centres.

National Load Despatch Centre

(2) The constitution and functions of the National Load Despatch Centre shall be such as may be prescribed by the Central Government:

Provided that the National Load Despatch Centre shall not engage in the business of trading in electricity.

(3) The National Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government.

27. (1) The Central Government shall establish a Centre for each region to be known as the Regional Load Despatch Centre having territorial jurisdiction as determined by the Central Government in accordance with section 25 for the purposes of exercising the powers and discharging the functions under this Part.

Constitution of Regional Load Despatch Centre.

(2) The Regional Load Despatch Centre shall be operated by a Government Company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government:

Provided that until a Government company or authority or corporation referred to in this sub-section is notified by the Central Government, the Central Transmission Utility shall operate the Regional Load Despatch Centre:

Provided further that no Regional Load Despatch Centre shall engage in the business of trading in electricity.

Functions of
Regional
Load
Despatch
Centre.

28. (1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.

(2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.

(3) The Regional Load Despatch Centre shall—

(a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;

(b) monitor grid operations;

(c) keep accounts of quantity of electricity transmitted through the regional grid;

(d) exercise supervision and control over the inter-State transmission system; and

(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code.

(4) The Regional Load Despatch Centre may levy and collect such fee and charges from the generating companies or licensees engaged in inter-State transmission of electricity as may be specified by the Central Commission.

Compliance of
directions.

29. (1) The Regional Load Despatch Centre may give such directions and exercise such supervision and control as may be required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control.

(2) Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the Regional Load Despatch Centres under sub-section (1).

(3) All directions issued by the Regional Load Despatch Centres to any transmission licensee of State transmission lines or any other licensee of the State or generating company (other than those connected to inter-State transmission system) or sub-station in the State shall be issued through the State Load Despatch Centre and the State Load Despatch Centres shall ensure that such directions are duly complied with by the licensee or generating company or sub-station.

(4) Subject to the provisions of this section, the Regional Power Committee in the region may, from time to time, unanimously agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region and every licensee and others involved in the operation of power system shall comply with the decision of the Regional Power Committee in respect of such matters.

(5) The Regional Load Despatch Centre shall enforce the decision of the Regional Power Committee referred to in sub-section (4).

(6) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the regional grid or in relation to any direction given under sub-section (1), it shall be referred to the Central Commission for decision:

Provided that pending the decision of the Central Commission, the directions of the Regional Load Despatch Centre shall be complied with by the State Load Despatch Centre or the licensee or the generating company, as the case may be.

(7) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section (2) or sub-section (3), he shall be liable to a penalty not exceeding rupees fifteen lacs.

Intra-State transmission

30. The State Commission shall facilitate and promote transmission, wheeling and inter-connection arrangements within its territorial jurisdiction for the transmission and supply of electricity by economical and efficient utilisation of the electricity.

Transmission within a State.

31. (1) The State Government shall establish a Centre to be known as the State Load Despatch Centre for the purposes of exercising the powers and discharging the functions under this Part.

Constitution of State Load Despatch Centres.

(2) The State Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any State Act, as may be notified by the State Government:

Provided that until a Government company or any authority or corporation is notified by the State Government, the State Transmission Utility shall operate the State Load Despatch Centre:

Provided further that no State Load Despatch Centre shall engage in the business of trading in electricity.

32. (1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.

Functions of State Load Despatch Centres.

(2) The State Load Despatch Centre shall—

(a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;

(b) monitor grid operations;

(c) keep accounts of the quantity of electricity transmitted through the State grid;

(d) exercise supervision and control over the intra-State transmission system; and

(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.

(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.

33. (1) The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.

Compliance of directions.

(2) Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the State Load Despatch Centre under sub-section (1).

(3) The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.

(4) The State Load Despatch Centre shall enforce the decision of the Regional Power Committee referred to in sub-section (4) of section 29.

(5) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under sub-section (1), it shall be referred to the State Commission for decision:

Provided that pending the decision of the State Commission, the directions of the State Load Despatch Centre shall be complied with by the licensee or generating company.

(6) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section (1), he shall be liable to penalty not exceeding rupees five lacs.

Other provisions relating to transmission

Grid
Standards.

34. Every transmission licensee shall comply with such technical standards, of operation and maintenance of transmission lines, in accordance with the Grid Standards, as may be specified by the Authority.

Intervening
transmission
facilities.

35. The Appropriate Commission may, on an application by any licensee, by order require any other licensee owning or operating intervening transmission facilities to provide the use of such facilities to the extent of surplus capacity available with such licensee.

Charges for
intervening
transmission
facilities.

36. (1) Every licensee shall, on an order made under section 35, provide his intervening transmission facilities at rates, charges and terms and conditions as may be mutually agreed upon:

Provided that the Appropriate Commission may specify rates, charges and terms and conditions if these cannot be mutually agreed upon by the licensees.

(2) The rates, charges and terms and conditions referred to in sub-section (1) shall be fair and reasonable, and may be proportionately allocated to such facilities.

Explanation.—For the purposes of sections 35 and 36, the expression “intervening transmission facilities” means the electric lines owned or operated by a licensee where such electric lines can be utilised for transmitting electricity for and on behalf of another licensee at his request and on payment of a tariff or charge.

Directions by
Appropriate
Government.

37. The Appropriate Government may issue directions to the Regional Load Despatch Centres or State Load Despatch Centres, as the case may be, to take such measures as may be necessary for maintaining smooth and stable transmission and supply of electricity to any region or State.

Central
Transmission
Utility and
functions.

38. (1) The Central Government may notify any Government company as the Central Transmission Utility:

Provided that the Central Transmission Utility shall not engage in the business of trading in electricity:

Provided further that the Central Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity of such Central Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as a transmission licensee, through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

(2) The functions of the Central Transmission Utility shall be—

(a) to undertake transmission of electricity through inter-State transmission system;

(b) to discharge all functions of planning and co-ordination relating to inter-

State transmission system with —

- (i) State Transmission Utilities;
- (ii) Central Government;
- (iii) State Governments;
- (iv) generating companies;
- (v) Regional Power Committees;
- (vi) Authority;
- (vii) licensees;
- (viii) any other person notified by the Central Government in this behalf;

(c) to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres;

(d) to provide non-discriminatory open access to its transmission system for use by—

(i) any licensee or generating company; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42,

on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the Central Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

39. (1) The State Government may notify the Board or a Government company as the State Transmission Utility:

Provided that the State Transmission Utility shall not engage in the business of trading in electricity:

Provided further that the State Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity, of such State Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as transmission licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

(2) The functions of the State Transmission Utility shall be—

(a) to undertake transmission of electricity through intra-State transmission system;

State
Transmission
Utility and
functions.

(b) to discharge all functions of planning and co-ordination relating to intra-State transmission system with—

- (i) Central Transmission Utility;
- (ii) State Governments;
- (iii) generating companies;
- (iv) Regional Power Committees;
- (v) Authority;
- (vi) licensees;
- (vii) any other person notified by the State Government in this behalf;

(c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;

(d) to provide non-discriminatory open access to its transmission system for use by—

- (i) any licensee or generating company; or
- (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42,

on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Duties of
transmission
licensees.

40. It shall be the duty of a transmission licensee —

(a) to build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system, as the case may be;

(b) to comply with the directions of the Regional Load Despatch Centre and the State Load Despatch Centre as the case may be;

(c) to provide non-discriminatory open access to its transmission system for use by—

- (i) any licensee or generating company; or
- (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42,

on payment of the transmission charges and a surcharge thereon, as may be specified by the Appropriate Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the Appropriate Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Appropriate Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

41. A transmission licensee may, with prior intimation to the Appropriate Commission, engage in any business for optimum utilisation of its assets:

Other business of transmission licensee.

Provided that a proportion of the revenues derived from such business shall, as may be specified by the Appropriate Commission, be utilised for reducing its charges for transmission and wheeling:

Provided further that the transmission licensee shall maintain separate accounts for each such business undertaking to ensure that transmission business neither subsidises in any way such business undertaking nor encumbers its transmission assets in any way to support such business:

Provided also that no transmission licensee shall enter into any contract or otherwise engage in the business of trading in electricity.

PART VI

DISTRIBUTION OF ELECTRICITY

Provisions with respect to distribution licensees

42. (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

Duties of distribution licensees.

(2) Where any person, whose premises are situated within the area of supply of a distribution licensee, requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access to its distribution system:

Provided that the open access shall be introduced in such phases and subject to such conditions, including the cross subsidies, and other operational constraints, as may be specified by the State Commission and in specifying the extent of open access in successive phases and in determining the charge for wheeling, the State Commission shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided further that such open access may be allowed before the cross subsidies are eliminated, on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Provided also that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission.

(3) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(4) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

Duty to supply
on request.

43. (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within six months, whichever is earlier.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within a period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

Exceptions
from duty to
supply
electricity.

44. Nothing contained in section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises if he is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control.

Power to
recover
charges.

45. (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include—

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

Power to
recover
expenditure.

46. The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

47. (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him—

Power to
require
security.

(a) in respect of the electricity supplied to such person; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter,

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in sub-section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.

48. A distribution licensee may require any person who requires a supply of electricity in pursuance of section 43 to accept—

Additional
terms of
supply.

(a) any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with the regulations made under section 53;

(b) any terms restricting any liability of the distribution licensee for economic loss resulting from negligence of the person to whom the electricity is supplied.

49. Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers may enter into agreement with any person for supply or purchase of electricity.

Agreements
with respect
to supply or
purchase of
electricity.

50. The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, tampering, distress or damage to electrical plant, electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plant or meter.

The Electri-
city Supply
Code.

51. A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilisation of its assets:

Other
businesses of
distribution
licensees.

Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilised for reducing its charges for wheeling:

Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidises in

any way such business undertaking nor encumbers its distribution assets in any way to support such business.

Provisions with respect to electricity traders

Provisions
with respect
to electricity
trader.

52. (1) Without prejudice to the provisions contained in clause (c) of section 12, the Appropriate Commission may, specify the technical requirement, capital adequacy requirement and credit worthiness for being an electricity trader.

(2) Every electricity trader shall discharge such duties, in relation to supply and trading in electricity, as may be specified by the Appropriate Commission.

Provisions with respect to supply generally

Provision
relating to
safety and
electricity
supply.

53. The Authority may specify suitable measures for—

(a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;

(b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property;

(c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specifications as may be specified;

(d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;

(e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;

(f) inspection of maps, plans and sections by any person authorized by it or by Electrical Inspector or by any person on payment of specified fee;

(g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or damage to property or interference with its use.

Control of
transmission
and use of
electricity.

54. (1) Save as otherwise exempted under this Act, no person other than the Central Transmission Utility or a State Transmission Utility, or a licensee shall transmit or use electricity at a rate exceeding two hundred and fifty watts and one hundred volts—

(a) in any street, or

(b) in any place,—

(i) in which one hundred or more persons are ordinarily likely to be assembled; or

(ii) which is a factory within the meaning of the Factories Act, 1948 or a mine within the meaning of the Mines Act, 1952; or

63 of 1948.
35 of 1952.

(iii) to which the State Government, by general or special order, declares the provisions of this sub-section to apply,

without giving, before the commencement of transmission or use of electricity, not less than seven days' notice in writing of his intention to the Electrical Inspector and to the District Magistrate or the Commissioner of Police, as the case may be, containing particulars of the electrical installation and plant, if any, the nature and the purpose

of supply and complying with such of the provisions of Part XVI of this Act, as may be applicable:

24 of 1989.

Provided that nothing in this section shall apply to electricity used for the public carriage of passengers, animals or goods, on, or for the lighting or ventilation of the rolling stock of any railway or tramway subject to the provisions of the Railways Act, 1989.

(2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are ordinarily likely to be assembled, the matter shall be referred to the State Government, and the decision of the State Government thereon shall be final.

(3) The provisions of this section shall be binding on the Government.

55. (1) No person shall supply electricity, after the expiry of two years from the appointed date, except through a meter to be installed and operated in accordance with the regulations to be made in this behalf by the Authority:

Use, etc., of
meters.

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter:

Provided further that the State Commission may, by notification, extend the said period of two years for a class or classes of persons or for such area as may be specified in that notification.

(2) For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Authority may direct the installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading, as it may deem necessary.

(3) If a person makes default in complying with the provisions contained in this section or the regulations made under sub-section (1), the Appropriate Commission may make such order as it thinks fit for requiring the default to be made good by the generating company or licensee or by any officers of a company or other association or any other person who is responsible for its default.

56. (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Disconnection
of supply in
default of
payment.

Provided that the supply of electricity shall not be cut off if such person deposits an amount equal to the sum claimed from him, under protest or as security pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

Consumer protection: Standards of performance

Standards of performance of licensee.

57. (1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:

Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination.

Different standards of performance by licensee.

58. The Appropriate Commission may specify different standards under sub-section (1) of section 57 for a class or classes of licensees.

Information with respect to levels of performance.

59. (1) Every licensee shall, within the period specified by the Appropriate Commission, furnish to the Commission the following information, namely:—

(a) the level of performance achieved under sub-section (1) of section 57;

(b) the number of cases in which compensation was made under sub-section (2) of section 57 and the aggregate amount of the compensation.

(2) The Appropriate Commission shall at least once in every year arrange for the publication, in such form and manner as it considers appropriate, of such of the information furnished to it under sub-section (1).

Market destination.

60. The Appropriate Commission may issue such directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry..

PART VII

TARIFF

Tariff regulations.

61. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:—

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multiyear tariff principles;

(g) that the tariff progressively reflects the cost of supply of electricity at an adequate and improving level of efficiency;

(h) that the tariff progressively reduces and eliminates cross-subsidies:

(i) the promotion of co-generation and generation of electricity from renewable sources of energy;

(j) the National Electricity Policy:

54 of 1948.
14 of 1998.

Provided that the terms and conditions for determination of tariff under of the Electricity (Supply) Act, 1948, the Electricity Regulatory Commissions Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier:

62. (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for—

Determination
of tariff.

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedure as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

63. Notwithstanding anything contained in section 62, the Appropriate Commission may adopt the tariff determined through process of bidding.

Determination
of tariff by
bidding
process.

64. (1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

Procedure for
tariff order

(2) Every applicant shall publish the application, in abridged form, as may be specified, in two leading daily newspapers circulating in India out of which one shall be in English.

(3) The Appropriate Commission shall, on receipt of the application under sub-section (1), publish in the manner as may be specified, the draft tariff order proposed to be made by it, inviting objections and suggestions on the draft tariff order from the public.

(4) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,—

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(5) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(6) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.

(7) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order.

Provision of
subsidy by
State
Government.

65. If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by the State Commission shall be applicable from the date of issue of orders by the Commission in this regard.

Development
of market.

66. The Appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified.

PART VIII

WORKS

Works of licensees

Provision as
to opening up
of streets,
railways, etc.

67. (1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as—

(a) to open and break up the soil and pavement of any street, railway or tramway;

(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

- (c) to alter the position of any line or works or pipes, other than a main sewer pipe;
- (d) to lay down and place electric lines, electrical plant and other works;
- (e) to repair, alter or remove the same;
- (f) to do all other acts necessary for transmission or supply of electricity.
- (2) The Appropriate Government may, by rules made by it in this behalf, specify,—
 - (a) the cases and circumstances in which the consent in writing of the appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;
 - (b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;
 - (c) the nature and period of notice to be given by the licensee before carrying out works;
 - (d) the procedure and manner of consideration of objections and suggestions received in accordance with the notice referred to in clause (c);
 - (e) the determination and payment of compensation or rent to the persons affected by works under this section;
 - (f) the repairs and works to be carried out when emergency exists;
 - (g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;
 - (h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;
 - (i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;
 - (j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;
 - (k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;
 - (l) the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;
 - (m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;
 - (n) the manner of restoration of property affected by such works and maintenance thereof;
 - (o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and
 - (p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.
- (3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.
- (4) Where any difference or dispute arises under this section, the matter shall be determined by the Appropriate Commission.

Provisions relating to overhead lines

68. (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

Overhead lines.

(2) The provisions contained in sub-section (1) shall not apply—

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer:

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases, as may be prescribed.

(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation.—For the purposes of this section, the expression “tree” shall be deemed to include any shrub, hedge, jungle growth or other plant.

Notice to
telegraph
authority.

69. (1) A licensee shall, before laying down or placing, within ten meters of any telegraph line, electric line, electrical plant or other works, not being either service lines or electric lines or electrical plant, for the repair, renewal or amendment of existing works of which the character or position is not to be altered,—

(a) submit a proposal in case of a new installation to an authority to be designated by the Central Government and such authority shall take a decision on the proposal within thirty days;

(b) give not less than ten days' notice in writing to the telegraph authority in case of repair, renewal or amendment of existing works, specifying—

(i) the course of the works or alterations proposed;

(ii) the manner in which the works are to be utilised;

(iii) the amount and nature of the electricity to be transmitted;

(iv) the extent to, and the manner in which (if at all), earth returns are to be used,

and the licensee shall conform to such reasonable requirements, either general or special, as may be laid down by the telegraph authority within that period for preventing any telegraph line from being injuriously affected by such works or alterations:

Provided that in case of emergency (which shall be stated by the licensee in writing to the telegraph authority) arising from defects in any of the electric lines or electrical plant or other works of the licensee, the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.

(2) Where the works of the laying or placing of any service line is to be executed, the licensee shall, not less than forty-eight hours before commencing the work, serve upon the telegraph authority a notice in writing of his intention to execute such works.

PART IX

CENTRAL ELECTRICITY AUTHORITY

Constitution and functions of Authority

Constitution,
etc., of
Central
Electricity
Authority.

70. (1) There shall be a body to be called the Central Electricity Authority to exercise such functions and perform such duties as are assigned to it under this Act.

(2) The Central Electricity Authority, established under section 3 of the Electricity (Supply) Act, 1948 and functioning as such immediately before the appointed date, shall be

the Central Electricity Authority for the purposes of this Act and the Chairperson, Members, Secretary and other officers and employees thereof shall be deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed under the Electricity (Supply) Act, 1948.

(3) The Authority shall consist of not more than fourteen Members of whom not more than eight shall be full-time Members to be appointed by the Central Government.

(4) The Central Government shall designate one of the full-time Members as Chairperson of the Authority.

(5) The Members of the Authority shall be appointed from amongst persons of ability, integrity and standing who have knowledge of, and adequate experience and capacity in, dealing with problems relating to engineering, finance, commerce, economics or industrial matters, and at least one Member shall be appointed from each of the following categories, namely:—

(a) engineering with specialisation in design, construction, operation and maintenance of generating stations;

(b) engineering with specialisation in transmission and supply of electricity;

(c) applied research in the field of electricity;

(d) applied economics, accounting, commerce or finance.

(6) All the Members of the Authority shall hold office during the pleasure of the Central Government.

(7) The Chairperson shall be the Chief Executive of the Authority.

(8) The headquarters of the Authority shall be at Delhi.

(9) The Authority shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.

(10) The Chairperson, or if he is unable to attend a meeting of the Authority, any other Member nominated by the Chairperson in this behalf and in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from among themselves shall preside at the meeting.

(11) All questions which come up before any meeting of the Authority shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or the person presiding shall have the right to exercise a second or casting vote.

(12) All orders and decisions of the Authority shall be authenticated by the Secretary or any other officer of the Authority duly authorised by the Chairperson in this behalf.

(13) No act or proceeding of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy in, or any defect in, the constitution of, the Authority.

(14) The Chairperson of the Authority and other full-time Members shall receive such salary and allowances as may be determined by the Central Government and other Members shall receive such allowances and fees for attending the meetings of the Authority, as the Central Government may prescribe.

(15) The other terms and conditions of service of the Chairperson and Members of the Authority including, subject to the provisions of sub-section (13), their terms of office shall be such as the Central Government may prescribe.

71. No Member of the Authority shall have any share or interest, whether in his own name or otherwise, in any company or other body corporate or an association of persons (whether incorporated or not) or a firm engaged in the business of generation, transmission, distribution and trading of electricity or fuel for the generation thereof or in the manufacture of electrical equipment.

Members not to have certain interest.

72. The Authority may appoint a Secretary and such other officers and employees as it considers necessary for the performance of its functions under this Act and on such terms as to salary, remuneration, fee, allowance, pension, leave and gratuity, as the Authority may in consultation with the Central Government, fix:

Officers and staff of Authority.

Provided that the appointment of the Secretary shall be subject to the approval of the Central Government.

Functions and
duties of
Authority.

73. The Authority shall perform such functions and duties as the Central Government may prescribe or direct, and in particular to—

- (a) advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system and co-ordinate the activities of the planning agencies for the optimal utilisation of resources to subserve the interests of the national economy and to provide reliable and affordable electricity for all consumers;
- (b) specify the technical standards for construction of electrical plants, electric lines and connectivity to the grid;
- (c) specify the safety requirements for construction, operation and maintenance of electrical plants and electric lines;
- (d) specify the Grid Standards for operation and maintenance of transmission lines;
- (e) specify the conditions for installation of meters for transmission and supply of electricity;
- (f) promote and assist in the timely completion of schemes and projects for improving and augmenting the electricity system;
- (g) promote measures for advancing the skill of persons engaged in the electricity industry;
- (h) advise the Central Government on any matter on which its advice is sought or make recommendation to that Government on any matter if, in the opinion of the Authority, the recommendation would help in improving the generation, transmission, trading, distribution and utilisation of electricity;
- (i) collect and record the data concerning the generation, transmission, trading, distribution and utilisation of electricity and carry out studies relating to cost, efficiency, competitiveness and such like matters;
- (j) make public from time to time the information secured under this Act, and provide for the publication of reports and investigations;
- (k) promote research in matters affecting the generation, transmission, distribution and trading of electricity;
- (l) carry out, or cause to be carried out, any investigation for the purposes of generating or transmitting or distributing electricity;
- (m) advise any State Government, licensee or the generating companies on such matters which shall enable them to operate and maintain the electricity system under their ownership or control in an improved manner and where necessary, in co-ordination with any other Government, licensee or the generating company owning or having the control of another electricity system;
- (n) advise the Appropriate Government and the Appropriate Commission on all technical matters relating to generation, transmission and distribution of electricity; and
- (o) discharge such other functions as may be provided under this Act.

Certain powers and directions

Power to
require
statistics and
returns.

74. It shall be the duty of every licensee, generating company or person generating electricity for its or his own use or consuming electricity to furnish to the Authority such accounts, statistics, returns or other information relating to generation, transmission, distribution, trading and use of electricity as it may require and at such times and in such form and manner as may be specified by the Authority.

Directions by
Central
Government
to Authority.

75. (1) In the discharge of its functions, the Authority shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

PART X

REGULATORY COMMISSIONS

Constitution, powers and functions of Central Commission

76. (1) There shall be a Commission to be known as the Central Electricity Regulatory Commission to exercise the powers conferred on, and discharge the functions assigned to, it under this Act.

Constitution
of Central
Commission.

14 of 1998.

(2) The Central Electricity Regulatory Commission, established under section 3 of the Electricity Regulatory Commissions Act, 1998 and functioning as such immediately before the appointed date, shall be deemed to be the Central Commission for the purposes of this Act and the Chairperson, Members, Secretary, and other officers and employees thereof shall be deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed under the Electricity Regulatory Commission Act, 1998.

(3) The Central Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(4) The head office of the Central Commission shall be at such place as the Central Government may, by notification, specify.

(5) The Central Commission shall consist of the following Members, namely:—

(a) a Chairperson and three other Members;

(b) the Chairperson of the Authority who shall be the Member, *ex officio*.

(6) The Chairperson and Members of the Central Commission shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 78.

77. (1) The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge of, or experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance or management and shall be appointed in the following manner, namely:—

Qualifications
for
appointment
of Members
of Central
Commission.

(a) one person having qualifications and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity;

(b) one person having qualifications and experience in the field of finance;

(c) two persons having qualifications and experience in the field of economics, commerce, law or management:

Provided that not more than one Member shall be appointed under the same category under clause (c).

(2) Notwithstanding anything contained in sub-section (1), the Central Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India.

(3) The Chairperson or any other Member of the Central Commission shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the Central Commission.

78. (1) The Central Government shall, for the purposes of selecting the Members of the Appellate Tribunal and the Chairperson and Members of the Central Commission, constitute a Selection Committee consisting of—

Constitution
of Selection
Committee to
recommend
Members.

(a) Member of the Planning Commission
incharge of the energy sector Chairperson;

(b) Secretary-in-charge of the Ministry of the Central Government
dealing with the Department of Legal Affairs..... Member;

(c) Chairperson of the Public Enterprises Selection Board..... Member;

- (d) a person to be nominated by the Central Government in accordance with sub-section (2)..... Member ;
- (e) a person to be nominated by the Central Government in accordance with sub-section (3)..... Member ;
- (f) Secretary-in-charge of the Ministry of the Central Government dealing with power..... Member.

(2) For the purposes of clause (d) of sub-section (1), the Central Government shall nominate from amongst persons holding the post of Chairperson or Managing Director, by whatever name called, of any public financial institution specified in section 4A of the Companies Act, 1956.

1 of 1956.

(3) For the purposes of clause (e) of sub-section (1), the Central Government shall, by notification, nominate from amongst persons holding the post of Director or the head of the institution, by whatever name called, of any research, technical or management institution for this purpose.

(4) Secretary-in-charge of the Ministry of the Central Government dealing with Power shall be the Convenor of the Selection Committee.

(5) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of a Member of the Appellate Tribunal or the Chairperson or a Member of the Central Commission and six months before the superannuation or end of tenure of the Member of the Appellate Tribunal or Member of the Central Commission, make a reference to the Selection Committee for filling up of the vacancy.

(6) The Selection Committee shall finalise the selection of the Chairperson and Members referred to in sub-section (5) within three months from the date on which the reference is made to it.

(7) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(8) Before recommending any person for appointment as Member of the Appellate Tribunal or the Chairperson or other Member of the Central Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as the Chairperson or Member.

(9) No appointment of the Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee:

Provided that nothing contained in this section shall apply to the appointment of a person as the Chairperson of the Central Commission where such person is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court.

Functions of
Central
Commission.

79. (1) The Central Commission shall discharge the following functions, namely:—

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate the inter-State transmission of electricity;

(d) to determine tariff for inter-State transmission of electricity;

(e) to issue licences to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

(g) to levy fees for the purposes of this Act;

(h) to specify Grid Code;

(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;

(j) to discharge such other functions as may be assigned under this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Commission may,—

(a) advise the Central Government on all or any of the following matters, namely:—

(i) formulation of National Electricity Policy and tariff policy;

(ii) promotion of competition, efficiency and economy in activities of the electricity industry;

(iii) promotion of investment in electricity industry;

(iv) any other matter referred to the Central Commission by that Government;

(b) fix the trading margin in inter-State trading of electricity, if considered necessary.

(3) The Central Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the Central Commission shall be guided by the National Electricity Policy published under sub-section (2) of section 3.

80. (1) The Central Commission may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Central Advisory Committee.

Central
Advisory
Committee.

(2) The Central Advisory Committee shall consist of not more than thirty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the electricity sector.

(3) The Chairperson of the Central Commission shall be the *ex officio* Chairperson of the Central Advisory Committee and the Members of that Commission and Secretary to the Government of India in charge of the Ministry or Department of the Central Government dealing with Consumer Affairs and Public Distribution System shall be the *ex officio* Members of the Committee.

81. The objects of the Central Advisory Committee shall be to advise the Central Commission on—

Objects of
Central
Advisory
Committee.

(i) major questions of policy;

(ii) matters relating to quality, continuity and extent of service provided by the licensees;

(iii) compliance by the licensees with the conditions and requirements of their licence;

(iv) protection of consumer interest;

(v) electricity supply and overall standards of performance by utilities.

Constitution, powers and functions of State Commissions

82. (1) Every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:

Constitution
of State
Commission.

14 of 1998.

Provided that the State Electricity Regulatory Commission, established by a State Government under section 17 of the Electricity Regulatory Commissions Act, 1998 and the enactments specified in the Schedule, and functioning as such immediately before the appointed date shall be the State Commission for the purposes of this Act and the Chairperson, Members, Secretary, and officers and other employees thereof shall continue to hold office, on the same terms and conditions on which they were appointed under those Acts.

(2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the State Commission shall be at such place as the State Government may, by notification, specify.

(4) The State Commission shall consist of not more than three Members, including the Chairperson.

(5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in section 85.

Joint
Commission.

83. (1) Notwithstanding anything to the contrary contained in section 82, a Joint Commission may be constituted by an agreement to be entered into—

(a) by two or more Governments of States; or

(b) by the Central Government, in respect of one or more Union territories, and one or more Governments of States,

and shall be in force for such period and shall be subject to renewal for each further period, if any, as may be stipulated in the agreement:

Provided that the Joint Commission, constituted under section 21A of the Electricity Regulatory Commissions Act, 1998 and functioning as such immediately before the appointed day, shall be the Joint Commission for the purposes of this Act and the Chairperson, Members, Secretary and other officers and employees thereof shall be deemed to have been appointed as such under this Act and they shall continue to hold office, on the same terms and conditions on which they were appointed under the Electricity Regulatory Commissions Act, 1998.

14 of 1998.

(2) The Joint Commission shall consist of one Member from each of the participating States and Union territories and the Chairperson shall be appointed from amongst the Members by consensus, failing which by rotation.

(3) An agreement under sub-section (1) shall contain provisions as to the name of the Joint Commission, the manner in which the participating States may be associated in the selection of the Chairperson and Members of the Joint Commission, manner of appointment of Members and appointment of Chairperson by rotation or consensus, places at which the Commission shall sit, apportionment among the participating States of the expenditure in connection with the Joint Commission, manner in which the differences of opinion between the Joint Commission and the State Government concerned would be resolved and may also contain such other supplemental, incidental and consequential provisions not inconsistent with this Act as may be deemed necessary or expedient for giving effect to the agreement.

(4) The Joint Commission shall determine tariff in respect of the participating States or Union territories separately and independently.

Qualifications
for appointment
of
Chairperson
and Members
of State
Commission.

84. (1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management.

(2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court.

(3) The Chairperson or any other Member of the State Commission shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the State Commission.

85. (1) The State Government shall, for the purposes of selecting the Members of the State Commission, constitute a Selection Committee consisting of—

Constitution
of Selection
Committee
to select
Members of
State
Commission.

- (a) a person who has been a Judge of the High Court..... Chairperson;
- (b) the Chief Secretary of the concerned State. Member;
- (c) the Chairperson or a Member of the Central Electricity Authority.....Member.

Provided that nothing contained in this section shall apply to the appointment of a person as the Chairperson who is or has been a Judge of the High Court.

(2) The State Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure of the Chairperson or Member, make a reference to the Selection Committee for filling up of the vacancy.

(3) The Selection Committee shall finalise the selection of the Chairperson and Members within three months from the date on which the reference is made to it.

(4) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(5) Before recommending any person for appointment as Chairperson or other Member of the State Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member, as the case may be.

(6) No appointment of Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.

86. (1) The State Commission shall discharge the following functions, namely:—

Functions of
State
Commission.

- (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State;

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

- (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

- (c) facilitate intra-State transmission and wheeling of electricity;

- (d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

- (e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, if it considers appropriate, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licence;

- (f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;

- (g) levy fee for the purposes of this Act;

- (h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

- (i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees; and

(j) discharge such other functions as may be assigned to it under this Act.

(2) Without prejudice to the provisions of sub-section (1), the State Commission may—

(a) advise the State Government on all or any of the following matters, namely:—

(i) promotion of competition, efficiency and economy in activities of the electricity industry;

(ii) promotion of investment in electricity industry;

(iii) reorganisation and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government;

(b) fix the trading margin in intra-State trading of electricity, if considered necessary.

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy published under sub-section (2) of section 3.

State
Advisory
Committee.

87. (1) The State Commission may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the State Advisory Committee.

(2) The State Advisory Committee shall consist of not more than twenty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the electricity sector.

(3) The Chairperson of the State Commission shall be the *ex officio* Chairperson of the State Advisory Committee and the Members of the State Commission and the Secretary to State Government in charge of the Ministry or Department dealing with Consumer Affairs and Public Distribution System shall be the *ex officio* Members of the Committee.

Objects of
State
Advisory
Committee.

88. The objects of the State Advisory Committee shall be to advise the Commission on—

(i) major questions of policy;

(ii) matters relating to quality, continuity and extent of service provided by the licensees;

(iii) compliance by licensees with the conditions and requirements of their licence;

(iv) protection of consumer interest; and

(v) electricity supply and overall standards of performance by utilities.

Appropriate Commission — Other provisions

Term of
office and
conditions of
service of
Members.

89. (1) The Chairperson or other Member shall hold office for a term of three years from the date he enters upon his office:

Provided that such Chairperson or other member shall be eligible for reappointment for a second term of three years:

Provided further that no Member shall hold office as such after he has attained the age of sixty-five years.

(2) The salary, allowances and other terms and conditions of service of the Chairperson and Members shall be such as may be prescribed by the Appropriate Government:

Provided that the salary, allowances and other terms and conditions of service of the Members, shall not be varied to their disadvantage after appointment.

(3) Every Member shall, before entering upon his office, make and subscribe to an oath of office and secrecy in such form and in such manner and before such authority as may be prescribed.

(4) Notwithstanding anything contained in sub-section (1), a Member may—

(a) relinquish his office by giving in writing to the Appropriate Government a notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 90.

(5) Any member ceasing to hold office as such shall—

(a) be ineligible for further employment under the Central Government or any State Government for a period of two years from the date he ceases to hold such office;

(b) not accept any commercial employment for a period of two years from the date he ceases to hold such office; and

(c) not represent any person before the Central Commission or any State Commission in any manner.

Explanation.—For the purposes of this sub-section—

(i) "employment under the Central Government or under any State Government" includes employment under any local or other authority within the territory of India under the control of the Central Government or a State Government, or under any corporation or society owned or controlled by the Government;

(ii) "commercial employment" means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in electricity industry and includes a director of a company or partner of a firm or setting up practice either independently or as partner of a firm or as an adviser or a consultant.

90. (1) No Member shall be removed from office except in accordance with the provisions of this section.

Removal of Member.

(2) The Central Government, in the case of a Member of the Central Commission, and the State Government, in the case of a Member of the State Commission, may by order remove from office any member, if he—

(a) has been adjudged an insolvent;

(b) has been convicted of an offence which, in the opinion of the Appropriate Government, involves moral turpitude;

(c) has become physically or mentally incapable of acting as a Member;

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member;

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has been guilty of proved misbehaviour:

Provided that no Member shall be removed from his office on any ground specified in clauses (d), (e) and (f) unless the Chairperson of the Appellate Tribunal on a reference being made to him in this behalf by the Central Government or the State Government, as the case may be, has, on an inquiry, held by him in accordance with such procedure as prescribed by the Central Government, reported that the Member ought on such ground or grounds to be removed.

(3) The Central Government or the State Government, as the case may be, may, in consultation with the Chairperson of the Appellate Tribunal suspend any Member of the

Appropriate Commission in respect of whom a reference has been made to the Chairperson of the Appellate Tribunal, under sub-section (2) until the Central Government or the State Government, as the case may be, has passed orders on receipt of the report of the Chairperson of the Appellate Tribunal, on such reference:

Provided that nothing contained in this section shall apply to the Chairperson of the Appropriate Commission who, at the time of his appointment as such is a sitting Judge of the Supreme Court or the Chief Justice of a High Court or a Judge of a High Court.

Proceedings and powers of Appropriate Commission

Secretary,
officers and
other
employees of
Appropriate
Commission.

91. (1) The Appropriate Commission may appoint a Secretary to exercise such powers and perform such duties as may be specified.

(2) The Appropriate Commission may, with the approval of the Appropriate Government, specify the numbers, nature and categories of other officers and employees.

(3) The salaries and allowances payable to, and other terms and conditions of service of, the Secretary, officers and other employees shall be such as may be specified with the approval of the Appropriate Government.

(4) The Appropriate Commission may appoint consultants required to assist that Commission in the discharge of its functions on the terms and conditions as may be specified.

Proceedings
of
Appropriate
Commission.

92. (1) The Appropriate Commission shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.

(2) The Chairperson, or if he is unable to attend a meeting of the Appropriate Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from amongst themselves, shall preside at the meeting.

(3) All questions which come up before any meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) Save as otherwise provided in sub-section (3), every Member shall have one vote.

(5) All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other officer of the Commission duly authorised by the Chairperson in this behalf.

Vacancies,
etc., not to
invalidate
proceedings.

93. No act or proceeding of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission.

Powers of
Appropriate
Commission.

94. (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed.

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.

45 of 1860. 2 of 1974. 95. All proceedings before the Appropriate Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appropriate Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Proceedings before Commission.

2 of 1974. 96. The Appropriate Commission or any officer, not below the rank of a Gazetted Officer specially authorised in this behalf by the Commission, may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, insofar as it may be applicable.

Powers of entry and seizure.

97. The Appropriate Commission may, by general or special order in writing, delegate to any Member, Secretary, officer of the Appropriate Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers to adjudicate disputes under section 79 and section 86 and the powers to make regulations under section 173 or section 176) as it may deem necessary.

Delegation.

Grants, Fund, Accounts, Audit and Report

98. The Central Government may, after due appropriation made by Parliament in this behalf, make to the Central Commission grants and loans of such sums of money as that Government may consider necessary.

Grants and loans by Central Government.

99. (1) There shall be constituted a Fund to be called the Central Electricity Regulatory Commission Fund and there shall be credited thereto—

Establishment of Fund by Central Government.

(a) any grants and loans made to the Central Commission by the Central Government under section 98;

(b) all fees received by the Central Commission under this Act;

(c) all sums received by the Central Commission from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(a) the salary, allowances and other remuneration of Chairperson, Members, Secretary, officers and other employees of the Central Commission;

(b) the expenses of the Central Commission in discharge of its functions under section 79;

(c) the expenses on objects and for purposes authorised by this Act.

(3) The Central Government may, in consultation with the Comptroller and Auditor-General of India, prescribe the manner of applying the Fund for meeting the expenses specified in clause (b) or clause (c) of sub-section (2).

100. (1) The Central Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and audit of Central Commission.

(2) The accounts of the Central Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Central Commission to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Central Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Central Commission.

(4) The accounts of the Central Commission, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid, as soon as may be after it is received before each House of Parliament.

Annual report
of Central
Commission.

101. (1) The Central Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

Grants and
loans by State
Government.

102. The State Government may, after due appropriation made by Legislature of a State in this behalf, make to the State Commission grants and loans of such sums of money as that Government may consider necessary.

Establishment
of Fund by
State
Government.

103. (1) There shall be constituted a Fund to be called the State Electricity Regulatory Commission Fund and there shall be credited thereto—

(a) any grants and loans made to the State Commission by the State Government under section 102;

(b) all fees received by the State Commission under this Act;

(c) all sums received by the State Commission from such other sources as may be decided upon by the State Government.

(2) The Fund shall be applied for meeting—

(a) the salary, allowances and other remuneration of Chairperson, Members, Secretary, officers and other employees of the State Commission;

(b) the expenses of the State Commission in discharge of its functions under section 86;

(c) the expenses on objects and for purposes authorised by this Act.

(3) The State Government may, in consultation with the Comptroller and Auditor-General of India, prescribe the manner of applying the Fund for meeting the expenses specified in clause (b) or clause (c) of sub-section (2).

Accounts and
audit of State
Commission.

104. (1) The State Commission shall maintain proper accounts and other relevant records and prepare annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government and that Government shall cause the same to be laid, as soon as may be after it is received, before the State Legislature.

105. (1) The State Commission shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government.

Annual report of State Commission.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.

106. The Appropriate Commission shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of that Commission and forward the same to the Appropriate Government.

Budget of Appropriate Commission.

107. (1) In the discharge of its functions, the Central Commission shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.

Directions by Central Government.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

108. (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.

Directions by State Government.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.

109. Notwithstanding anything contained in this Act, where any Joint Commission is established under section 83—

Directions to Joint Commission.

(a) the Government of the State, for which the Joint Commission is established, shall be competent to give any direction under this Act only in cases where such direction relates to matter within the exclusive territorial jurisdiction of the State;

(b) the Central Government alone shall be competent to give any direction under this Act where such direction relates to a matter within the territorial jurisdiction of two or more States or pertaining to a Union territory if the participating Governments fail to reach an agreement or the participating States or majority of them request the Central Government to issue such directions.

PART XI

APPELLATE TRIBUNAL FOR ELECTRICITY

110. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Electricity to hear appeals against the orders of the adjudicating officer or the Appropriate Commission under this Act.

Establishment of Appellate Tribunal.

111. (1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Appeal to Appellate Tribunal.

Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

Composition
of Appellate
Tribunal.

112. (1) The Appellate Tribunal shall consist of a Chairperson and such number of Members not exceeding three, as the Central Government may deem fit.

(2) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Appellate Tribunal with two or more Members of the Appellate Tribunal as the Chairperson of the Appellate Tribunal may deem fit:

Provided that every Bench constituted under this clause shall include at least one Judicial Member and one Technical Member;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at Delhi and such other places as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson of the Appellate Tribunal may transfer a Member of the Appellate Tribunal from one Bench to

another Bench.

Explanation.—For the purposes of this Chapter,—

(i) “Judicial Member” means a Member of the Appellate Tribunal appointed as such under sub-clause (i) of clause (b) of sub-section (1) of section 113, and includes the Chairperson of the Appellate Tribunal;

(ii) “Technical Member” means a Member of the Appellate Tribunal appointed as such under sub-clause (ii) or sub-clause (iii) of clause (b) of sub-section (1) of section 113.

113. (1) A person shall not be qualified for appointment as the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal unless he—

Qualifications for appointment of Chairperson and Member of Appellate Tribunal.

(a) in the case of the Chairperson of the Appellate Tribunal, is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court; and

(b) in the case of a Member of the Appellate Tribunal,—

(i) is, or has been, or is qualified to be, a Judge of a High Court; or

(ii) is, or has been, a Secretary for at least one year in the Ministry or Department of the Central Government dealing with economic affairs or matters or infrastructure; or

(iii) is, or has been, a person of ability and standing, having adequate knowledge and experience in dealing with the matters relating to energy production, supply and energy management, standardisation and efficient use of energy and its conservation or in the field of economics, commerce, law or management:

(2) The Chairperson of the Appellate Tribunal shall be appointed by the Central Government after consultation with the Chief Justice of India.

(3) The Members of the Appellate Tribunal shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 78.

(4) Before appointing any person for appointment as Chairperson or other Member of the Appellate Tribunal, the Central Government shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member.

114. The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office:

Term of office.

Provided that such Chairperson or other Member shall be eligible for reappointment for a second term of three years:

Provided further that no Chairperson of the Appellate Tribunal or Member of the Appellate Tribunal shall hold office as such after he has attained,—

(a) in the case of the Chairperson of the Appellate Tribunal, the age of seventy years;

(b) in the case of a Member of the Appellate Tribunal, the age of sixty-five years.

115. The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson of the Appellate Tribunal and Members of the Appellate Tribunal shall be such as may be prescribed by the Central Government:

Terms and conditions of service.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

Vacancies.

116. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Resignation
and removal.

117. (1) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.

(2) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court, as the Central Government may appoint for this purpose in which the Chairperson or a Member of the Appellate Tribunal concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

Member to
act as
Chairperson
in certain
circumstances.

118. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member of the Appellate Tribunal shall discharge the functions of the Chairperson of the Appellate Tribunal until the date on which the Chairperson of the Appellate Tribunal resumes his duties.

Officers and
other
employees of
Appellate
Tribunal.

119. (1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may deem fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other terms and conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed by the Central Government.

Procedure and
powers of
Appellate
Tribunal.

120. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

5 of 1908.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

1 of 1872.

- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation of default or deciding it *ex parte*;
- (h) setting aside any order of dismissal or any representation for default or any order passed by it *ex parte*;
- (i) any other matter which may be prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

45 of 1860.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

2 of 1974.

121. The Chairperson of the Appellate Tribunal shall exercise general power of superintendence and control over the Appropriate Commission.

Power of Chairperson of Appellate Tribunal.

122. (1) Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Distribution of business amongst Benches and transfer of cases from one Bench to another Bench.

(2) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

123. If the Members of the Appellate Tribunal of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Decision to be by majority.

124. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal, as the case may be.

Right of appellant to take assistance of legal practitioner and of Appropriate Commission to appoint presenting officers.

(2) The Appropriate Commission may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal, as the case may be.

Appeal to
Supreme
Court.

125. Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:

5 of 1908

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

PART XII

INVESTIGATION AND ENFORCEMENT

Assessment

126. (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom a notice has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

Provided that in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthorised use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.

(6) The assessment under this section shall be made at a rate equal to one-and-half times the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation.—For the purposes of this section “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated by the State Government.

Appeal to
adjudicating
officer.

127. (1) Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal, in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission to an adjudicating officer appointed under sub-section (1) of section 143.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to one-third of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The adjudicating officer shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the adjudicating officer passed under sub-section (3) shall be final.

(5) No appeal shall lie to the adjudicating officer against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment an amount of interest at the rate of sixteen per cent. per annum compounded every six months.

128. (1) The Appropriate Commission may, on being satisfied that a licensee has failed to comply with any of the conditions of licence or a generating company or a licensee has failed to comply with any of the provisions of this Act or the rules or regulations made thereunder, at any time, by order in writing, direct any person (hereafter in this section referred to as "Investigating Authority") specified in the order to investigate the affairs of any generating company or licensee and to report to that Commission on any investigation made by such Investigating Authority:

Investigation
of certain
matters.

Provided that the Investigating Authority may, wherever necessary, employ any auditor or any other person for the purpose of assisting him in any investigation under this section.

1 of 1956.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Authority may, at any time, and shall, on being directed so to do by the Appropriate Commission, cause an inspection to be made, by one or more of its officers, of any licensee or generating company and his books of account; and the Investigating Authority shall supply to the licensee or generating company, as the case may be, a copy of his report on such inspection.

(3) It shall be the duty of every manager, managing director or other officer of the licensee or generating company, as the case may be, to produce before the Investigating Authority directed to make the investigation under sub-section (1), or inspection under sub-section (2), all such books of account, registers and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the licensee or generating company, as the case may be, as the said Investigating Authority may require of him within such time as the said Investigating Authority may specify.

(4) Any Investigating Authority, directed to make an investigation under sub-section (1), or inspection under sub-section (2), may examine on oath any manager, managing director or other officer of the licensee or generating company, as the case may be, in relation to his business and may administer oaths accordingly.

(5) The Investigating Authority, shall, if it has been directed by the Appropriate Commission to cause an inspection to be made, and may, in any other case, report to the Appropriate Commission on any inspection made under this section.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Appropriate Commission may, after giving such opportunity to the licensee or generating company, as the case may be, to make a representation in connection with the report as in the opinion of the Appropriate Commission seems reasonable, by order in writing—

(a) require the licensee or the generating company to take such action in respect of any matter arising out of the report as the Appropriate Commission may think fit; or

(b) cancel the licence; or

(c) direct the generating company to cease to carry on the business of generation of electricity.

(7) The Appropriate Commission may, after giving reasonable notice to the licensee or the generating company, as the case may be, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Appropriate Commission may specify the minimum information to be maintained by the licensee or the generating company in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by licensee or the generating company in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Authority to discharge satisfactorily its functions under this section.

Explanation.—For the purposes of this section, the expression “licensee or the generating company” shall include in the case of a licensee incorporated in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of generation or transmission or distribution or trading of electricity exclusively outside India; and

(b) all its branches whether situated in India or outside India.

(9) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the licensee or the generating company, as the case may be, and shall have priority over the debts due from the licensee or the generating company and shall be recoverable as an arrear of land revenue.

Orders for
securing
compliance.

129. (1) Where the Appropriate Commission, on the basis of material in its possession, is satisfied that a licensee is contravening, or is likely to contravene, any of the conditions mentioned in his licence or conditions for grant of exemption or the licensee or the generating company has contravened or is likely to contravene any of the provisions of this Act, it shall, by an order, give such directions as may be necessary for the purpose of securing compliance with that condition or provision.

(2) While giving direction under sub-section (1), the Appropriate Commission shall have due regard to the extent to which any person is likely to sustain loss or damage due to such contravention.

Procedure for,
issuing
directions by
Appropriate
Commission.

130. The Appropriate Commission, before issuing any direction under section 129, shall—

(a) serve notice in the manner as may be specified to the concerned licensee or the generating company;

(b) publish the notice in the manner as may be specified for the purpose of bringing the matters to the attention of persons, likely to be affected, or affected;

(c) consider suggestions and objections from the concerned licensee or generating company and the persons, likely to be affected, or affected.

PART XIII

REORGANISATION OF BOARD

Vesting of
property of
Board in
State
Government.

131. (1) With effect from the date on which a transfer scheme, prepared by the State Government to give effect to the objects and purposes of this Act, is published or such further date as may be stipulated by the State Government (hereafter in this Part referred to as the effective date), any property, interest in property, rights and liabilities which immediately before the effective date belonged to the State Electricity Board (hereinafter referred to as the Board) shall vest in the State Government on such terms as may be agreed between the State Government and the Board.

(2) Any property, interest in property, rights and liabilities vested in the State Government under sub-section (1) shall be re-vested by the State Government in a Government company or in a company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of the State Government as may be stipulated in such scheme, on such terms and conditions as may be agreed between the State Government and such company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be:

Provided that the transfer value of any assets transferred hereunder shall be determined, as far as may be, based on the revenue potential of such assets at such terms and conditions as may be agreed between the State Government and the State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be.

(3) Notwithstanding anything contained in this section, where,—

(a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the State Government, the scheme shall give effect to the transfer only for fair value to be paid by the transferee to the State Government;

(b) a transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties and even if such persons or third parties have not consented to it.

(4) The State Government may, after consulting the Government company or company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, referred to in sub-section (2) (hereinafter referred to as the transferor), require such transferor to draw up a transfer scheme to vest in a transferee being any other generating company or transmission licensee or distribution licensee, the property, interest in property, rights and liabilities which have been vested in the transferor under this section, and publish such scheme as statutory transfer scheme under this Act.

(5) A transfer scheme under this section may—

(a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements which shall promote the profitability and viability of the resulting entity, ensure economic efficiency, encourage competition and protect consumer interests;

(b) define the property, interest in property, rights and liabilities to be allocated—

(i) by specifying or describing the property, rights and liabilities in question; or

(ii) by referring to all the property, interest in property, rights and liabilities comprised in a described part of the transferor's undertaking; or

(iii) partly in one way and partly in the other;

(c) provide that any rights or liabilities stipulated or described in the scheme shall be enforceable by or against the transferor or the transferee;

(d) impose on the transferor an obligation to enter into such written agreements with or execute such other instruments in favour of any other subsequent transferee as may be stipulated in the scheme;

(e) mention the functions and duties of the transferee;

(f) make such supplemental, incidental and consequential provisions as the transferor considers appropriate including provision stipulating the order as taking effect; and

(g) provide that the transfer shall be provisional for a stipulated period.

(6) All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by the Board, with the Board or for the Board, or the State Transmission Utility or generating company or transmission licensee or distribution licensee, before a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by the Board, with the Board or for the State Government or the transferee and all suits or other legal proceedings instituted by or against the Board or transferor, as the case may be, may be continued or instituted by or against the State Government or concerned transferee, as the case may be.

(7) The Board shall cease to be charged with and shall not perform the functions and duties with regard to transfers made on and after the effective date.

Explanation.—For the purposes of this Part,—

(a) "Government company" means a Government company formed and registered under the Companies Act, 1956;

1 of 1956.

(b) "company" means a company to be formed and registered under the Companies Act, 1956 to undertake generation or transmission or distribution in accordance with the scheme under this Part.

1 of 1956.

Use of
proceeds of
sale or
transfer of
Board etc

132. In the event that a Board or any utility owned or controlled by the Appropriate Government is sold or transferred in any manner to a person who is not owned or controlled by the Appropriate Government, the proceeds from such sale or transfer shall be utilised in priority to all other dues in the following order, namely :—

(a) dues (including retirement benefits due) to the officers and employees of such Board or utility, who have been affected by the aforesaid sale or transfer;

(b) payment of debt or other liabilities of the transferor as may be required by the existing loan covenants.

Provisions
relating to
officers and
employees

133. (1) The State Government may, by a transfer scheme, provide for the transfer of the officers and employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under section 131.

(2) Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee on such terms and conditions as may be determined in accordance with the transfer scheme:

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme:

Provided further that the transfer can be provisional for a stipulated period.

Explanation. — For the purposes of this section and the transfer scheme, the expression "officers and employees" shall mean all officers and employees who on the date specified in the scheme are the officers and employees of the Board or transferor, as the case may be.

Payment of
compensation
or damages
on transfer.

134. Notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law for the time being in force and except for the provisions made in this Act, the transfer of the employment of the officers and employees referred to in sub-section (1) of section 133 shall not entitle such officers and employees to any compensation or damages under this Act, or any other Central or State law, save as provided in the transfer scheme.

14 of 1947.

PART—XIV

OFFENCES AND PENALTIES

Theft of
electricity.

135. (1) Whoever, dishonestly,—

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use—

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity ;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity ;

Provided further that if it is proved that any artificial means or means not authorised by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(2) Any officer authorised in this behalf by the State Government may —

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been, is being, or is likely to be, used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, is being, or is likely to be, used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under subsection (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list :

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

2 of 1974.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

136. (1) Whoever, dishonestly —

(a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located, without the consent of the owner, whether or not the act is done for profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

Theft of
electric lines
and materials.

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain,

is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

Punishment
for receiving
stolen
property.

Interference
with meters
or works of
licensee.

137. Whoever, dishonestly receives any stolen electric line or material knowing or having reasons to believe the same to be stolen property, shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both.

138. (1) Whoever,—

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or wilfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering; or

(e) intentionally or improperly uses the electricity of a licensee,

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such reconnection as is referred to in clause (b), or such communication as is referred to in clause (c), or for causing such alteration or prevention as is referred to in clause (d), or for facilitating such improper use as is referred to in clause (e), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

Negligently
wasting
electricity or
injuring
works.

Penalty for
maliciously
wasting
electricity or
injuring
works.
Extinguishing
public lamps.

139. Whoever, negligently causes electricity to be wasted, or diverted or negligently breaks, injures, throws down or damages any material connected with the supply of electricity, shall be punishable with fine which may extend to ten thousand rupees.

140. Whoever, maliciously causes electricity to be wasted or diverted, or, with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

141. Whoever, maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to six month or with fine which may extend to two thousand rupees, or with both.

142. In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

Punishment
for non-
compliance
of directions
by
Appropriate
Commission

143. (1) For the purpose of adjudging under this Act, the Appropriate Commission shall appoint any of its Members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Appropriate Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty

Power to
adjudicate

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

144. While adjudicating the quantum of penalty under section 29 or section 33 or section 43, the adjudicating officer shall have due regard to the following factors, namely:—

Factors to be
taken into
account by
adjudicating
officer

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the repetitive nature of the default.

145. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 and the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Civil court
not to have
jurisdiction

146. Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence.

Punishment
for non-
compliance
of orders or
directions

147. The penalties imposed under this Act shall be in addition to, and not in derogation of, any liability in respect of payment of compensation or, in the case of a licensee, the revocation of his licence which the offender may have incurred.

Penalties not
to affect
other
liability.

148. The provisions of this Act shall, so far as they are applicable, be deemed to apply also when the acts made punishable thereunder are committed in the case of electricity supplied by or of works belonging to the Appropriate Government.

Penalty
where work
belong to
Government

149. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:

Offences by
companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm

Abetment.

150. (1) Whoever abets an offence punishable under this Act, shall, notwithstanding anything contained in the Indian Penal Code, be punished with the punishment provided for the offence.

45 of 1860

(2) Without prejudice to any penalty or fine which may be imposed or prosecution proceeding which may be initiated under this Act or any other law for the time being in force, if any officer or other employee of the Board or the licensee enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any theft of electricity is committed, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Cognizance of offences.

151. No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.

Compounding of offences.

152. (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

2 of 1974

TABLE

Nature of Service	Rate at which the sum of money for compounding to be collected per Kilowatt (KW)/ Horse Power (HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere (KVA) of contracted demand for High Tension (HT)
(1)	(2)
1. Industrial Service	twenty thousand rupees;
2. Commercial Service	ten thousand rupees;
3. Agricultural Service	two thousand rupees;
4. Other Services	four thousand rupees:

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

2 of 1974.

(4) The compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.

PART XV

DISPUTE RESOLUTION

Arbitration

153. Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the licence of a licensee, be determined by such person or persons as the Appropriate Commission may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

Arbitration.

26 of 1996.

PART XVI

OTHER PROVISIONS

Protective clauses

154. No person shall, in the generation, transmission, distribution, supply or use of electricity, in any way injure any railway, highway, airports, tramway, canal or water-way or any dock, wharf or pier vested in or controlled by a local authority, or obstruct or interfere with the traffic on any railway, airway, tramway, canal or water-way.

Protection of railways, highways, airports and canals, docks, wharfs and piers.

155. (1) Every person generating, transmitting, distributing, supplying or using electricity (hereafter in this section referred to as the "operator") shall take all reasonable precautions in constructing, laying down and placing his electric lines, electrical plant and other works and in working his system, so as not injuriously to affect, whether by induction or otherwise, the working of any wire or line used for the purpose of telegraphic, telephone or electric signalling communication, or the currents in such wire or line.

Protection of telegraphic, telephonic and electric signalling lines.

(2) Where any difference or dispute arises between the operator, and the telegraph authority as to whether the operator has constructed, laid down or placed his electric lines, electrical plant or other works, or worked his system, in contravention of sub-section (1), or as to whether the working of any wire, line or current is or is not injuriously affected thereby, the matter shall be referred to the Central Government and the Central Government, unless it is of opinion that the wire or line has been placed in unreasonable proximity to the electric lines, electrical plant or works of the operator after the construction of such lines, plant or works, may direct the operator to make such alterations in, or additions to, his system as may be necessary in order to comply with the provisions of this section, and the operator shall make such alterations or additions accordingly:

Provided that nothing in this sub-section shall apply to the repair, renewal or amendment of any electric line or electrical plant so long as the course of the electric line or electrical plant and the amount and nature of the electricity transmitted thereby are not altered.

(3) Where the operator makes default in complying with the requirements of this section, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Explanation.— For the purposes of this section, a telegraph line shall be deemed to be injuriously affected if telegraphic, telephonic or electric signalling communication by means of such line is, whether through induction or otherwise, prejudicially interfered with by an electric line, electrical plant or other work or by any use made thereof.

156. (1) If any accident occurs in connection with the generation, transmission, distribution, supply or use of electricity in or in connection with, any part of the electric lines or electrical plant of any person and the accident results or is likely to have resulted in loss of

Notice of accidents and inquiries.

human or animal life or in any injury to a human being or an animal, such person shall give notice of the occurrence and of any such loss or injury actually caused by the accident, in such form and within such time as may be prescribed, to the Electrical Inspector or such other person as aforesaid and to such other authorities as the Appropriate Government may by general or special order, direct.

(2) The Appropriate Government may, if it thinks fit, require any Electrical Inspector, or any other person appointed by it in this behalf, to inquire and report --

(a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with, the generation, transmission, distribution, supply or use of electricity, or

(b) as to the manner in, and extent to, which the provisions of this Act or rules and regulations made thereunder or of any licence, so far as those provisions affect the safety of any person, have been complied with.

(3) Every Electrical Inspector or other person holding an inquiry under sub-section (2) shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects, and every person required by an Electrical Inspector be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

5 of 1908.

45 of 1860.

Appointment
of Chief
Electrical
Inspector and
Electrical
Inspector

157. (1) The Appropriate Government may, by notification, appoint duly qualified persons to be Chief Electrical Inspector or Electrical Inspectors and every such Inspector so appointed shall exercise the powers and perform the functions of a Chief Electrical Inspector or an Electrical Inspector under this Act within such areas or in respect of such class of works and electric installations and subject to such restrictions as the Appropriate Government may direct.

(2) In the absence of express provision to the contrary in this Act, or any rule made thereunder, an appeal shall lie from the decision of a Chief Electrical Inspector or an Electrical Inspector to the Appropriate Government or if the Appropriate Government, by general or special order so directs, to an Appropriate Commission.

Power for
licensee to
enter
premises and
to remove
fittings or
other
apparatus of
licensee.

158. (1) A licensee or any person duly authorised by a licence may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which electricity is, or has been, supplied by him, of any premises or land, under, over, along, across, in or upon which the electric supply-lines or other works have been lawfully placed by him for the purpose of --

(a) inspecting, testing, repairing or altering the electric supply-lines, meters, fittings, works and apparatus for the supply of electricity belonging to the licensee; or

(b) ascertaining the amount of electricity supplied or the electrical quantity contained in the supply; or

(c) removing where a supply of electricity is no longer required, or where the licensee is authorised to take away and cut off such supply, any electric supply-lines, meters, fittings, works or apparatus belonging to the licensee.

(2) A licensee or any person authorised as aforesaid may also, in pursuance of a special order in this behalf made by an Executive Magistrate and after giving not less than twenty-four hours notice in writing to the occupier, --

(a) enter any premises or land referred to in sub-section (1) for any of the purposes mentioned therein;

(b) enter any premises to which electricity is to be supplied by him, for the purpose of examining and testing the electric wires fittings, works and apparatus for the use of electricity belonging to the consumer.

(3) Where a consumer refuses to allow a licensee or any person authorised as aforesaid to enter his premises or land in pursuance of the provisions of sub-section (1) or, sub-section (2), when such licensee or person has so entered, refuses to allow him to perform any act which he is authorised by those sub-sections to perform, or fails to give reasonable facilities for such entry or performance, the licensee may, after the expiry of twenty-four hours from the service of a notice in writing on the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer.

13 of 1885. 159. The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.

Exercise of powers of Telegraph Authority in certain cases.

160. (1) In section 40, sub-section (1) of clause (b) and section 41, sub-section (5) of the Land Acquisition Act, 1894, the term "work" shall be deemed to include electricity supplied or to be supplied by means of the work to be constructed.

Amendment of sections 40 and 41 of Act 1 of 1894.

1 of 1894. (2) The Appropriate Government may, on recommendation of the Appropriate Commission in this behalf, if it thinks fit, on the application of any person, not being a company desirous of obtaining any land for its purposes, direct that he may acquire such land under the provisions of the Land Acquisition Act, 1894 in the same manner and on the same conditions as it might be acquired if the person were a company.

PART XVII

MISCELLANEOUS

161. (1) The Central Government shall constitute a coordination forum consisting of the Chairperson of the Central Commission and Members thereof, the Chairperson of the Authority, representatives of generating companies and transmission licensees engaged in inter-State transmission of electricity for smooth and coordinated development of the power system in the country.

Coordination Forum.

(2) The Central Government shall also constitute a forum of regulators consisting of the Chairperson of the Central Commission and Chairpersons of the State Commissions.

(3) The Chairperson of the Central Commission shall be the Chairperson of the Forum of regulators referred to in sub-section (2).

(4) The State Government shall constitute a Coordination Forum consisting of the Chairperson of the State Commission and members thereof representatives of the generating companies, transmission licensee and distribution licensees engaged in generation, transmission and distribution of electricity in that State for smooth and coordinated development of the power system in the State.

(5) There shall be a committee in each district to be constituted by the Appropriate Government—

- (a) to coordinate and review the extension of electrification in each district;
- (b) to review the quality of power supply and consumer satisfaction;
- (c) to promote energy efficiency and its conservation.

Exemption of electric lines or electrical plants from attachment in certain cases.

Protection of action taken in good faith.

Members, officers, etc., of Appellate Tribunal, Appellate Commission to be public servants

Recovery of sums payable under Act.

Services of notices, orders or documents.

Transitional provisions.

162. Where any electric lines or electrical plant, belonging to a licensee are placed in or upon any premises or land not being in the possession of the licensee, such electric lines or electrical plant shall not be liable to be taken in execution under any process of any civil court or in any proceedings in insolvency against the person in whose possession the same may be.

163. No suit, prosecution or other proceeding shall lie against the Appropriate Government or Appellate Tribunal or the Appropriate Commission or any officer of Appropriate Government, or any Member, Officer or other employee of the Appellate Tribunal or any Members, officer or other employees of the Appropriate Commission or the assessing officer or any public servant for anything done or in good faith purporting to be done under this Act or the rules or regulations made thereunder.

164. The Chairperson, Members, officers and other employees of the Appellate Tribunal and the Chairperson, Members, Secretary, officers and other employees of the Appropriate Commission and the assessing officer referred to in section 126 shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

165. Any amount payable by a person under the Act, if not paid, may be recovered as if it were an arrear of land revenue.

166. (1) Every notice, order or document by or under this Act required, or authorised to be addressed to any person may be served on him by delivering the same after obtaining signed acknowledgement receipt therefor or by registered post or such means of delivery as may be prescribed —

(a) where the Appropriate Government is the addressee, at the office of such officer as the Appropriate Government may prescribe in this behalf;

(b) where the Appropriate Commission is the addressee, at the office of the Appropriate Commission;

(c) where a company is the addressee, at the registered office of the company or, in the event of the registered office of the company not being in India, at the head office of the company in India;

(d) where any other person is the addressee, at the usual or last known place of abode or business of the person.

(2) Every notice, order or document by or under this Act required or authorised to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the owner or occupier of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

167. Notwithstanding anything to the contrary contained in this Act,—

(a) a State Electricity Board constituted under the repealed laws shall be deemed to be the State Transmission Utility and a licensee under the provisions of this Act for a period of one year from the appointed date or such earlier date as the State Government may notify, and shall perform the duties and functions of the State Transmission Utility and a licensee in accordance with the provisions of this Act and rules and regulations made thereunder:

Provided that the State Government may, by notification, authorise the State Electricity Board to continue to function as the State Transmission Utility or a licensee for such further period beyond the said period of one year as may be stipulated in the notification;

(b) all licences, authorisations, approvals, clearances and permissions granted under the provisions of the repealed laws may, for a period not exceeding one year from the appointed date or such earlier period; as may be notified by the Appropriate Government, continue to operate as if the repealed laws were in force with respect to such licences, authorisations, approvals, clearances and permissions, as the case may be, and thereafter such licences, authorisations, approvals, clearances and permissions shall be deemed to be licences, authorisations, approvals, clearances and permission under this Act and all provisions of this Act shall apply accordingly to such licences authorisations approvals, clearances and permissions.

54 of 1948.

(c) the undertaking of the State Electricity Boards established under section 5 of the Electricity (Supply) Act, 1948 may after the expiry of the period specified in clause (a) be transferred in accordance with the provisions of Part XIII of this Act;

(d) the State Government may, by notification, declare that any or all the provisions contained in this Act, shall not apply in that State for such period, not exceeding six months from the appointed date, as may be stipulated in the notification.

68 of 1986,
33 of 1962.

168. Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962.

Inconsistency
in laws

169. Save as otherwise provided in section 168, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have
overriding
effect.

170. The provisions of this Act are in addition to and not in derogation of any other law for the time being in force.

Provisions of
this Act to be
in addition to
and not in
derogation of
other laws.

171. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power of
Central
Government
to make
rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: —

(a) the time within which the objection and suggestions on the draft National Electricity Plan to be invited by the Authority under the proviso to sub-section (4) of section 3;

(b) the payment of fees for application for grant of licence under sub-section (1) of section 15;

(c) the constitution and functions of the National Load Despatch Centre under sub-section (2) of section 26;

(d) the works of licensees affecting the property of owner or occupier under sub-section (2) of section 67;

(e) such other cases which may be prescribed under clause (c) of sub-section (2) of section 68;

(f) allowances and fees payable to other Members for attending the meetings of Authority under sub-section (14) of section 70;

(g) other terms and conditions of service of the Chairperson and Members of the Authority under sub-section (15) of section 70;

(h) the functions and duties of the Central Electricity Authority under section 73;

(i) the salary, allowances and other conditions of service of Chairperson and Member of Central Commission under sub-section (2) of section 89;

(j) the form and manner in which and the authority before whom oath of office and secrecy should be subscribed under sub-section (3) of section 89;

(k) the procedure to be prescribed by the Central Government under the proviso to sub-section (2) of section 90;

(l) any other matter required to be prescribed under clause (g) of sub-section (1) of section 94;

(m) the form in which the Central Commission shall prepare its annual statements of accounts under sub-section (1) of section 100;

(n) the form in which and time at which the Central Commission shall prepare its annual report under sub-section (1) of section 101;

(o) the form in which and time at which the Central Commission shall prepare its budget under section 106;

(p) the form the manner of verifying such form, and fee for filing appeal under sub-section (2) of section 111;

(q) the salary and allowances payable to and the other terms and conditions of service of the Chairperson of the Appellate Tribunal and Members of the Appellate Tribunal under section 115;

(r) the salary and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 119;

(s) the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 120;

(t) manner of holding inquiry by an adjudicating officer and sub-section (1) of section 143;

(u) the form in which and the time at which service of notices to any person or to the Central Government for the purpose under sub-section (1) of section 156;

(v) the manner of delivery of every notice, order or document to be served under sub-section (1) of section 166;

(w) any other matter which is required to be, or may be, prescribed.

Powers of
Authority to
make
regulations

172. (1) The Authority may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act

(2) In particular and without prejudice to the generality of the power conferred in sub-section (1), such regulations may provide for all or any of the following matters, namely:—

(a) the Grid Standards under section 34;

(b) suitable measures relating to safety and electric supply under section 53;

(c) the installation and operation of meters under section 55;

(d) the rules of procedure for transaction of business under sub-section (9) of section 70;

(e) the technical standards for construction of electrical plants and electric lines and connectivity to the grid under clause (b) of section 73;

(f) the form and manner in which and the time at which the State Government and licensees shall furnish statistics, returns or other information under section 74;

(g) any other matter which is to be, or may be, specified;

(3) All regulations made by the Authority under this Act shall be subject to the conditions of previous publication.

173. (1) The Central Commission may, by notification make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

Powers of
Central
Commission
to make
regulations.

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of following matters, namely:—

- (a) period to be specified under the first proviso to section 14;
- (b) the form and the manner of the application under sub-section (1) of section 15;
- (c) the manner and particulars of notice under sub-section (2) of section 15;
- (d) the conditions of licence under section 16;
- (e) the manner and particulars of notice under clause (a) of sub-section (2) of section 18;
- (f) publication of alterations or amendments to be made in the licence under clause (c) of sub-section (2) of section 18;
- (g) Grid Code under sub-section (2) of section 28;
- (h) levy and collection of fees and charge from generating companies or transmission utilities or licensees under sub-section (4) of section 28;
- (i) rates, charges and terms and conditions in respect of intervening transmission facilities under proviso to section 36;
- (j) payment of the transmission charges and a surcharge under sub-clause (ii) of clause (d) of sub-section (2) of section 38;
- (k) reduction and elimination of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 38;
- (l) payment of transmission charges and a surcharge under sub-clause (ii) of clause (c) of section 40;
- (m) reduction and elimination of surcharge and cross subsidies under the second proviso to sub-clause (ii) of clause (c) of section 40;
- (n) proportion of revenues from other business to be utilised for reducing the transmission and wheeling charges under proviso to section 41;
- (o) duties of electricity trader under sub-section (2) of section 52;
- (p) standards of performance of a licensee or class of licensees under sub-section (1) of section 57;
- (q) the period within which information to be furnished by the licensee under sub-section (1) of section 59;
- (r) the terms and conditions for the determination of tariff under section 61;
- (s) details to be furnished by licensee or generating company under sub-section (2) of section 62;
- (t) the procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62;

(u) the manner of making an application before the Central Commission and the fee payable therefor under sub-section (1) of section 64;

(v) the manner of publication of draft tariff order under sub-section (3) of section 64;

(w) issue of tariff order with modifications or conditions under sub-section (4) of section 64;

(x) the manner by which development of market in power including trading specified under section 66;

(y) the powers and duties of the Secretary of the Central Commission under sub-section (1) of section 91;

(z) the terms and conditions of service of the Secretary, officers¹ and other employees of Central Commission under sub-section (3) of section 91;

(zu) the rules of procedure for transaction of business under sub-section (1) of section 92;

(zb) minimum information to be maintained by a licensee or the generating company and the manner of such information to be maintained under sub-section (8) of section 128;

(zc) the manner of service and publication of notice under section 130;

(zd) any other matter which is to be, or may be specified by regulations.

(3) All regulations made by the Central Commission under this Act shall be subject to the conditions of previous publication.

Rules and regulations to be laid before Parliament.

174. Every rule made by the Central Government, every regulation made by the Authority, and every regulation made by the Central Commission shall be laid, as soon as may be after it is made, before each House of the Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Powers of State Governments to make rules.

175. (1) The State Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely: —

(a) the payment of fees for application for grant of licence under sub-section (1) of section 15;

(b) the works of licensees affecting the property of other persons under sub-section (2) of section 67;

(c) such other matters which may be prescribed under clause (c) of sub-section (2) of section 68;

(d) the salary, allowances and other terms and conditions of service of the Chairperson and Members of the State Commission under sub-section (2) of section 89;

(e) the form and manner in which and the authority before him oath of office and secrecy should be subscribed under sub-section (3) of section 89;

(f) any other matter required to be prescribed by the State Commission under clause (g) of sub-section (1) of section 94;

(g) the manner of applying the Fund under sub-section (3) of section 103;

(h) the form in which and time at which the State Commission shall prepare its annual accounts under sub-section (1) of section 104;

(i) the form in which and time at which the State Commission shall prepare its annual report under sub-section (1) of section 105;

(j) the form in which and time at which the State Commission shall prepare its budget under section 106;

(k) manner of service of provisional order of assessment under sub-section (2) of section 126;

(l) manner of holding inquiry by an adjudicating officer under sub-section (1) of section 143;

(m) the form in which and the time at which notice to the Electrical Inspector under sub-section (1) of section 156;

(n) the manner of delivery of every notice, order or document under sub-section (1) of section 166; and

(o) any other matter which is required to be, or may be, prescribed.

176. (1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

Powers of
State
Commissions
to make
regulations.

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:—

(a) period to be specified under the first proviso to section 14;

(b) the form and the manner of application under sub-section (1) of section 15;

(c) the manner and particulars of application for license to be published under sub-section (2) of section 15;

(d) the conditions of licence under section 16;

(e) the manner and particulars of notice under clause (a) of sub-section (2) of section 18;

(f) publication of the alterations or amendments to be made in the licence under clause (c) of sub-section (2) of section 18;

(g) levy and collection of fees and charges from generating companies or licensees under sub-section (3) of section 32;

(h) rates, charges and the term and conditions in respect of intervening transmission facilities under proviso to section 36;

(i) payment of the transmission charges and a surcharge under sub-clause (ii) of clause (d) of sub-section (2) of section 39;

(j) reduction and elimination of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39;

(k) manner and utilization of payment and surcharge under the fourth proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39;

(l) payment of the transmission charges and a surcharge under sub-clause (ii) of clause (c) of section 40;

(m) reduction and elimination of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (c) of section 40;

(n) the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of section 40;

(o) proportion of revenues from other business to be utilised for reducing the transmission and wheeling charges under proviso to section 41;

(p) reduction and elimination of surcharge and cross subsidies under the fourth proviso to sub-section (3) of section 42;

(q) payment of additional charges on charges of wheeling under sub-section (3) of section 42;

(r) guidelines under sub-section (4) of section 42;

(s) methods and principles by which charges for electricity shall be fixed under sub-section (2) of section 45;

(t) reasonable security payable to the distribution licensee under sub-section (1) of section 47;

(u) payment of interest on security under sub-section (4) of section 47;

(v) electricity supply code under section 50;

(w) the proportion of revenues from other business to be utilised for reducing wheeling charges under proviso to section 51;

(x) duties of electricity trader under sub-section (2) of section 52;

(y) standards of performance of a licensee or a class of licensees under sub-section (1) of section 57;

(z) the period within which information to be furnished by the licensee under sub-section (1) of section 59;

(za) the terms and conditions for the determination of tariff under section 61;

(zb) details to be furnished by licensee or generating company under sub-section (2) of section 62;

(zc) the methodologies and procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62;

(zd) the manner of making an application before the State Commission and the fee payable therefor under sub-section (1) of section 64;

(ze) the manner of publication of draft tariff order under sub-section (3) of section 64;

(zf) issue of tariff order with modifications or conditions under sub-section (4) of section 64;

(zg) the manner by which development of market in power including trading specified under section 66;

(zh) the powers and duties of the Secretary of the State Commission under sub-section (1) of section 91;

(zf) the terms and conditions of service of the secretary, officers and other employees of the State Commission under sub-section (2) of section 91;

(zg) rules of procedure for transaction of business under sub-section (1) of section 92;

(zh) minimum information to be maintained by a licensee or the generating company and the manner of such information to be maintained under sub-section (8) of section 128;

(zi) the manner of service and publication of notice under section 130;

(zm) the form of and preferring the appeal and the manner in which such form shall be verified and the fee for preferring the appeal under sub-section (1) of section 127;

(zn) any other matter which is to be, or may be, specified.

(3) All regulations made by the State Commission under this Act shall be subject to the condition of previous publication.

177. Every rule made by the State Government and every regulation made by the State Commission shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Rules and regulations to be laid before State Legislature.

178. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

179. The provisions of this Act shall not apply to the Ministry or Department of the Central Government dealing with Defence, Atomic Energy or such other similar Ministries or Departments or undertakings or Boards or institutions under the control of such Ministries or Departments as may be notified by the Central Government.

Provisions of Act not to apply in certain cases.

180. (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, —

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under sections 67 to 69 of this Act are made;

(c) the Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 as it stood before such repeal shall continue to be in force till the regulations under section 53 of this Act are made.

9 of 1910.
54 of 1948.
14 of 1998.

9 of 1910.

9 of 1910.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.

(4) The Central Government may, as and when considered necessary, by notification, amend Schedule.

(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.

10 of 1897.

THE SCHEDULE

ENACTMENTS

[See sub-section (3) of section 180]

1. The Orissa Electricity Reform Act, 1995 (Orissa Act No. 2 of 1996)
 2. The Haryana Electricity Reform Act, 1997 (Haryana Act No. 10 of 1998)
 3. The Andhra Pradesh Electricity Reform Act, 1998 (Andhra Pradesh Act No. 30 of 1998)
 4. The Uttar Pradesh Electricity Reform Act, 1999 (Uttar Pradesh Act No. 24 of 1999)
 5. The Karnataka Electricity Reform Act, 1999 (Karnataka Act No. 25 of 1999)
 6. The Rajasthan Electricity Reform Act, 1999 (Rajasthan Act No. 23 of 1999)
 7. The Delhi Electricity Reforms Act, 2000 (Delhi Act No. 2 of 2001)
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STATEMENT OF OBJECTS AND REASONS

The Electricity Supply Industry in India is presently governed by three enactments namely, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948, the Electricity Regulatory Commissions Act, 1998.

1.1 The Indian Electricity Act, 1910 created the basic framework for electric supply industry in India which was then in its infancy. The Act envisaged growth of the Electricity industry through private licensees. Accordingly, it provided for licensees who could supply electricity in a specified area. It created the legal framework for laying down of wires and other works relating to the supply of electricity.

1.2 The Electricity (Supply) Act, 1948 mandated the creation of a State Electricity Board. The State Electricity Board has the responsibility of arranging the supply of electricity in the State. It was felt that electrification which was limited to cities needed to be extended rapidly and the State should step in to shoulder this responsibility through the State Electricity Boards. Accordingly the State Electricity Boards through the successive Five Year Plans undertook rapid growth and expansion by utilising Plan funds.

1.3 Over a period of time, however, the performance of SEBs has deteriorated substantially on account of various factors. For instance, though power to fix tariffs vests with the State Electricity Boards, they have generally been unable to take decisions on tariffs in a professional and independent manner and tariff determination in practice has been done by the State Governments. Cross-subsidies have reached unsustainable levels. To address this issue and to provide for distancing of government from determination of tariffs, the Electricity Regulatory Commissions Act, was enacted in 1998. It created the Central Electricity Regulatory Commission and has an enabling provision through which the State Governments can create a State Electricity Regulatory Commission. 16 States have so far notified/created State Electricity Regulatory Commissions either under the Central Act or under their own Reform Acts.

2. Starting with Orissa, some State Governments have been undertaking reforms through their own Reform Acts. These reforms have involved unbundling of the State Electricity Boards into separate Generation, Transmission and Distribution Companies through transfer schemes for the transfer of the assets and staff into successor Companies. Orissa, Haryana, Andhra Pradesh, Karnataka, Rajasthan and U.P. have passed their Reform Acts and unbundled their State Electricity Boards into separate companies. Delhi and M.P. have also enacted their Reforms Acts which, *inter alia*, envisage unbundling/corporatisation of SEBs.

3. With the policy of encouraging private sector participation in generation, transmission and distribution and the objective of distancing the regulatory responsibilities from the Government to the Regulatory Commissions, the need for harmonising and rationalising the provisions in the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 in a new self contained comprehensive legislation arose. Accordingly it became necessary to enact a new legislation for regulating the electricity supply industry in the country which would replace the existing laws, preserve its core features other than those relating to the mandatory existence of the State Electricity Board and the responsibilities of the State Government and the State Electricity Board with respect to regulating licensees. There is also need to provide for newer concepts like power trading and open access. There is also need to obviate the requirement of each State Government to pass its own Reforms Act. The Bill has progressive features and

endeavours to strike the right balance given the current realities of the power sector in India. It gives the State enough flexibility to develop their power sector in the manner they consider appropriate. The Electricity Bill, 2001 has been finalised after extensive discussions and consultations with the States and all other stake holders and experts.

4. The main features of the Bill are as follows:

(i) Generation is being delicensed and captive generation is being freely permitted. Hydro projects would, however, need approval of the State Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilisation of water resources.

(ii) There would be a Transmission Utility at the Central as well as state level, which would be a Government company and have the responsibility of ensuring that the transmission network is developed in a planned and coordinated manner to meet the requirements of the sector. The load despatch function could be kept with the Transmission Utility or separated. In the case of separation the load despatch function would have to remain with a State Government organisation/company.

(iii) There is provision for private transmission licensees.

(iv) There would be open access in transmission from the outset with provision for surcharge for taking care of current level of cross subsidy with the surcharge being gradually phased out.

(v) Distribution licensees would be free to undertake generation and generating companies would be free to take up distribution licensees.

(vi) The State Electricity Regulatory Commissions may permit open access in distribution in phases with surcharge for—

(a) current level of cross subsidy to be gradually phased out along with cross subsidies; and

(b) obligation to supply.

(vii) For rural and remote areas stand alone systems for generation and distribution would be permitted.

(viii) For rural areas decentralised management of distribution through Panchayats, Users Associations, Cooperatives or Franchisees would be permitted.

(ix) Trading as a distinct activity is being recognised with the safeguard of the Regulatory Commissions being authorised to fix ceilings on trading margins, if necessary.

(x) Where there is direct commercial relationship between a consumer and a generating company or a trader the price of power would not be regulated and only the transmission and wheeling charges with surcharge would be regulated.

(xi) There is provision for a transfer scheme by which company/companies can be created by the State Governments from the State Electricity Boards. The State Governments have the option of continuing with the State Electricity Boards which under the new scheme of things would be a distribution licensee and the State Transmission Utility which would also be owning generation assets. The service conditions of the employees would as a result of restructuring not be inferior.

(xii) An Appellate Tribunal has been created for disposal of appeals against the decision of the CERC and State Electricity Regulatory Commissions so that there is

speedy disposal of such matters. The State Electricity Regulatory Commission is a mandatory requirement.

(ciii) Provisions relating to theft of electricity have a revenue focus.

5. The Bill seeks to replace the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998.

6. The Bill seeks to achieve the above objects.

New Delhi;

SURESH P. PRABHU.

The 24th August, 2001.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 23/24/99-R&R(Vol. IX)/471, dated the 27th August, 2001 from Shri Suresh P. Prabhu, Minister of Power to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Electricity Bill, 2001 has recommended its introduction in Lok Sabha under article 117(1) of the Constitution and for its consideration by Lok Sabha under article 117(3) of the Constitution.

Notes on clauses

Clause 2.—This clause defines the various expressions occurring in the Bill.

Clause 3.—This clause provides that the Central Government from time to time prepare the National Electricity Policy including the tariff policy in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources including conservation thereof and the use of renewable sources of electricity and publish the same. Further, the Central Government in consultation with the State Governments may also review or revise the aforesaid National Electricity Policy. This clause further provides that the Central Electricity Authority shall in consultation with the Central Government, prepare a National Electricity Plan in accordance with the National Electricity Policy and notify the same once in five years. Further, the Authority while preparing the National Electricity Plan, publish the draft of such plan inviting suggestions and objections from licensees, generating companies and the general public within a framework of time.

Clause 4.—This clause provides that the Central Government shall after consultation with the State Governments, prepare and notify a national policy permitting stand alone systems (including those based on renewable sources of energy and other non-conventional sources of energy) for rural areas.

Clause 5.—This clause provides that the Central Government shall also formulate a national policy in consultation with the State Governments and the State Electricity Regulatory Commissions for rural electrification and for bulk purchase of power and management of local distribution in rural areas through users associations, co-operatives, non-governmental organisations, franchisees or Panchayat Institutions.

Clause 6.—This clause provides that the Appropriate Government shall endeavour to supply electricity to all areas including villages and hamlets.

Clause 7.—This clause *inter alia*, provides that any generating company may establish, operate and maintain a generating station without a licence under proposed legislation, if it complies with the technical standards relating to grid connectivity.

Clause 8.—This clause provides that any company intending to set up a hydro electric generating station shall obtain approval of the Appropriate Government. Such company shall also prepare and submit to the Authority for concurrence, a scheme involving capital expenditure exceeding such sum as may be fixed by the Central Government from time to time.

Clause 9.—This clause provides that notwithstanding anything contained in proposed legislation person may construct, maintain or operate a captive generating plant and dedicated transmission lines provided that the supply of electricity from such captive generating plant through the grid shall be regulated in the same manner as the generating station of a company. It further provides that such person shall have open access for carrying electricity from such plant to his destination of use subject to availability of transmission facility which shall be determined by the concerned Transmission Utility.

Clause 10.—This clause provides for the duties of generating companies such as to establish operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of proposed legislation or rules or regulations made thereunder. It further provides that a generating company may supply electricity to any licensee in accordance with the proposed legislation and subject to the regulations made under sub-clause (2) of clause 42 a generating company may supply electricity directly to any consumer. It also requires every generating company to submit technical details to the Appropriate Commission and the Authority and to coordinate with the concerned Transmission Utility for transmission of electricity.

Clause 11—This clause provides that the Appropriate Government may specify in extraordinary circumstances that a generating company shall operate any generating station in accordance with the directions of that Government.

Clause 12.—This clause provides that no person can transmit or distribute or undertake trading in electricity unless he is authorised so to do by a licence issued under clause 14 or exempted under clause 13 of the Bill.

Clause 13.—This clause provides that the Appropriate Commission, on the recommendation of the Appropriate Government and also in public interest, direct, subject to such conditions and restrictions, by notification that any of the provisions of the proposed legislation shall not apply to any local authority, Panchayat Institution, users' association, co-operative societies, non-governmental organisation.

Clause 14.—This clause provides for grant of licence by the Appropriate Commission to transmit, distribute and undertake trading in electricity in any area specified in the licence. It also provides that a person engaged in the business of transmission or supply of electricity under the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under the proposed legislation for such period as may be stipulated in the licence or approval granted under the repealed laws. But the provisions of such repealed laws in respect of such licence shall apply for a period of one year from the date of commencement of the proposed legislation or such earlier period as may be specified by the Appropriate Commission. It further provides that the Central Transmission Utility, the State Transmission Utility as well as the Government company or a company referred to in sub-clause (2) of clause 131 and the company or companies created in pursuance of the Acts specified in the Schedule shall be deemed to be a licensee under the proposed legislation. It also allows a person to generate and distribute electricity in a rural area, without licence. It also *inter alia* provides that licence can be granted to more than one person in the same area.

Clause 15.—This clause provides for the manner of application by a person seeking licence and the procedure for grant of licence by Appropriate Commission. It also provides that a person intending to act as a transmission licensee shall also forward a copy of his application to the Central Transmission Utility or the State Transmission Utility and thereupon such utility shall within thirty days after the receipt of such application send its recommendations to the Appropriate Commission. It also provides that the Appropriate Commission shall as far as practicable dispose of the application made by a person for a licence within ninety days after the receipt of such application either grant or reject the application for reasons to be recorded in writing. The Appropriate Commission shall also forward a copy of such licence granted to the applicant, to the Appropriate Commission, Appropriate Government and the Authority. The licence which has been issued under this clause shall be enforced for such period as may be mentioned in the licence.

Clause 16.—This clause provides for every licensee to comply with certain conditions as specified therein. However, the Appropriate Commission shall within one year from the appointed date specify any general or specific condition of licence to be applicable to the deemed licensees after the expiration of period of one year from the commencement of the proposed legislation.

Clause 17.—This clause imposes certain restrictions on the licensees. It provides that a licensee shall not, without the prior approval of the Appropriate Commission, undertake any transaction to acquire by purchase or take over or otherwise, merge his utility with the utility of any other licensee, in the same State. It also provides that any agreement relating to any transaction specified above shall be void unless the same is made without prior approval of the Appropriate Commission.

Clause 18.—This clause provides that the Appropriate Commission on an application by the licensee or otherwise make such alterations and amendments in the terms and conditions of a licence in the public interest. However, such alterations or

amendments shall not be made without the consent of a licensee unless such consent in the opinion of the Appropriate Commission has been unreasonably withheld. This clause further provides that before any alterations or amendments in the licence are made, the licensee shall comply with certain procedures specified therein.

Clause 19.—This clause provides for the circumstances under which the Appropriate Commission may revoke the licence. No licence shall be revoked unless the Appropriate Commission has given to the licensee not less than three months' notice in writing stating the ground on which it proposes to revoke the licence and has also considered the cause shown by the licensee against the proposed revocation. It also provides that the Appropriate Commission instead of revoking licence under this clause may permit it to remain in force subject to certain further terms and conditions which may be imposed by it. If the Commission revokes a licence it shall serve a notice of revocation upon the licensee and shall fix a date on which the revocation takes effect. It also provides that the licensee with the prior approval of the Appropriate Commission and without prejudice to any penalty that may be imposed or prosecution proceedings which may be initiated, sell his utility to any person who is found eligible by the Appropriate Commission.

Clause 20.—This clause provides that where the Appropriate Commission under clause 19 has revoked the licence of a licensee, the Appropriate Commission may invite applications for acquiring the utilities of the licensee. The sale shall be completed in accordance with the procedure specified therein. In case the utility has been delivered by licensee before the completion of the sale, the Appropriate Commission, if it deems fit, permit the intending purchaser to operate the utility pending completion of the sale.

Clause 21.—This clause provides that where a utility is sold under clause 20, the utility shall vest in the purchaser, free from all encumbrances, such as debt, mortgage or similar obligation of the licensee and the purchaser shall be deemed to be the licensee exercising all the powers under the licence.

Clause 22.—This clause provides that if the utility has not been sold in the manner provided under clause 20, the licensee may dispose of the utility in such manner as he may think fit. However, if the licensee does not dispose of the utility within a period of six months from the date of revocation of his licence the Appropriate Commission may cause the works of the licensee to be removed and recover the cost of such removal from the licensee.

Clause 23.—This clause provides that the Appropriate Commission may give direction to the licensees if it is necessary and expedient so to do, for maintaining the efficient supply and securing the equitable distribution of electricity and promoting competition. It may also by order provide for regulating supply, distribution, consumption or use thereof.

Clause 24.—This clause provides that if at any time in the opinion of the Appropriate Commission, a distribution licensee has not complied with the terms and conditions of licence and any direction given by the Appropriate Commission specified therein, the Appropriate Commission for reasons to be recorded in writing suspend the licence for a period not exceeding one year and appoint an Administrator to discharge the functions of the distribution licensee in accordance with the terms and conditions of licence. However, the Appropriate Commission shall give reasonable opportunity to a distribution licensee before suspending a licence. It further provides that during the period of one year of suspension, the licence shall be either revoked and utility sold in accordance with the procedure laid down in clause 20 or restored to the distribution licensee.

Clause 25.—This clause provides that the Central Government may make region wise demarcation of the country for efficient, economical and integrated transmission and supply of electricity to facilitate inter-connections and co-ordination of facilities for the inter-State, regional and inter-regional generation and transmission of electricity.

Clause 26.—This clause provides that the Central Government may establish at the national level a National Load Despatch Centre for optimum scheduling and despatch of electricity among Regional Load Despatch Centres.

Clause 27.—This clause provides that the Central Government shall establish a Centre for each region to be known as the Regional Load Despatch Centre having territorial jurisdiction as determined by the Central Government and shall be operated by a Government company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government. It also provides that until such Government company or authority or corporation is notified by the Central Government, the Regional Load Despatch Centre shall be operated by the Central Transmission Utility. It further provides that no Regional Load Despatch Centre shall engage in the business of trading in electricity.

Clause 28.—This clause provides for the functions of the Regional Load Despatch Centre as the apex body to ensure integrated operation of the power system in the concerned regions. The Regional Load Despatch Centre shall be responsible for co-ordinating the regulation and control of and optimum scheduling and despatch of electricity within the region in accordance with the contracts entered into with the licensees or the generating companies operating in the regions. It also provides that the Centre shall comply with such principles, guidelines and methodologies in respect of wheeling and optimum scheduling and despatch of electricity as specified by the Central Commission in the Grid Code. The Centre shall further be responsible for carrying out real time operations for Grid control, etc., in accordance with the Grid Standards. The Centre shall monitor grid operations, keep accounts of the quantity of electricity transmitted through the regional grid and exercise supervision and control over the inter-State transmission system. The Centre may levy and collect such fee and charges from the generating companies or transmission utilities or licensees engaged in inter-State transmission of electricity as may be specified by the Central Commission.

Clause 29.—This clause provides for compliance by every licensee, generating company, generating stations, sub-stations and any person connected with the operation of the power system, of the directions given by the Regional Load Despatch Centre for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control. It also provides that all the directions issued by the Regional Load Despatch Centre to any transmission licensee of State transmission lines or generating company or sub-station in the State shall be issued through the State Load Despatch Centre which shall ensure that such directions are duly complied with by the licensee, generating company or sub-stations. It further provides that the Regional Power Committee in the region may from time to time unanimously agree on matters concerning the stability, smooth operation of the integrated grid and economy and efficiency in the operation of the power system in the region and every licensee and others involved in the operation of the power system shall comply with the decision of the Regional Power Committee. It further provides that the Regional Load Despatch Centre shall enforce the decision of the Regional Power Committee. If any dispute arises with reference to the quality of the electricity and safe, secure and integrated operation of the regional grid or in relation to any direction given by the Regional Load Despatch Centre, it shall be referred to the Central Commission.

Clause 30.—This clause provides that the State Commission shall facilitate and promote transmission, wheeling and inter-connection arrangements within its State territorial jurisdiction for the transmission and supply of electricity by economical and efficient utilisation of the electricity.

Clause 31.—This clause provides that the State Government shall establish a centre to be known as the State Load Despatch Centre. It also provides that a Government company or any authority or corporation established or constituted by or under any State Act to be specified by the State Government shall operate the State Load Despatch

Centre. It further provides that until such Government company or authority or corporation is notified by the State Government, the State Transmission Utility shall operate the State Load Despatch Centre. Further, such State Load Despatch Centre shall not engage in the business of trading in electricity.

Clause 32.—This clause provides for the functions of the State Load Despatch Centre as the apex body to ensure integrated operation of the power system in a State. The State Load Despatch Centre shall be responsible for optimum scheduling and despatch of electricity within the State. The Centre shall be responsible for carrying out real time operations for grid control and despatch of electricity within the State in accordance with the Grid Standards and the State Grid Code. The Centre shall monitor grid operations, keep accounts of the quantity of electricity transmitted through the State grid and exercise supervision and control over the intra-State transmission system. The Centre may levy and collect such fee and charges from the licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.

Clause 33.—This clause provides that the directions of the State Load Despatch Centre shall be complied with by every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system for ensuring grid operations and for achieving the maximum economy, efficiency in the operation of the power system in the State. If any dispute arises with reference to the quality of the electricity and safe, secure and integrated operation of the regional grid or in relation to any direction, given it shall be referred to the State Commission.

Clause 34.—This clause provides that every transmission licensee shall comply with such technical standards of operation and maintenance of transmission lines in Grid Standards as may be specified by the Authority.

Clause 35.—This clause provides that the Appropriate Commission may on an application by a licensee by order require any other licensee owning or operating intervening transmission facilities, to provide the use of such facilities to the extent of surplus capacity available with such licensee.

Clause 36.—This clause provides that in compliance of the order made under clause 35, the licensee shall provide his transmission facilities at rates, charges and terms and conditions as may be mutually agreed upon. Such rates, charges and terms and conditions shall be fair and reasonable.

Clause 37.—This clause provides that the Appropriate Government may issue directions to the Regional Load Despatch Centres or the State Load Despatch Centres to take such necessary measures for maintaining the transmission and supply of electricity to any region and State.

Clause 38.—This clause provides that the Central Government may notify any Government company as the Central Transmission Utility. However, the Central Transmission Utility shall not engage in the business of trading in electricity. The Central Government may transfer and vest any property, interest in property, rights and liabilities and personnel involved in the transmission of electricity to a company or companies to be incorporated under the Companies Act, 1956, to function as a transmission licensee. The functions of the Central Transmission Utility shall be *inter alia*, to discharge all functions of planning and co-ordination relating to inter-State transmission system to ensure development of efficient, co-ordinated and economical system of inter-State transmission lines and to provide non-discriminatory open access to its transmission system, on payment of transmission charges and a surcharge thereon, as may be specified by the Central Commission. Such surcharge shall be utilised to meet current level of cross-subsidy and that such surcharge shall be progressively reduced and eliminated.

Clause 39.—This clause provides that the State Government may specify by notification any Board or Government company as the State Transmission Utility. However, the State Transmission Utility shall not engage in the business of trading in

electricity. The State Government may transfer and vest any property, interest, property rights and liabilities and personnel involved in the transmission of electricity to a company or companies to function as transmission licensee. The functions of the State Transmission Utility shall be *inter alia* to discharge all functions of planning and co-ordination relating to inter-State transmission system to ensure development of efficient, co-ordinated and economical system of inter-State transmission lines and to provide non-discriminatory open access to its transmission system, on payment of transmission charges and a surcharge thereon, as may be specified by the State Commission. Such surcharge shall be utilised to meet the current level of cross-subsidy and that such surcharge shall be progressively reduced and eliminated.

Clause 40.—This clause provides for duties of a transmission licensee to build, maintain and operate an efficient and co-ordinated and economical inter and intra-State transmission system and also to provide non-discriminatory open access to its transmission system on payment of transmission charges and a surcharge as may be specified by the Appropriate Commission such surcharge shall be utilised to meet current level of cross-subsidy and that such surcharge shall be progressively reduced and eliminated.

Clause 41.—This clause provides that a transmission licensee may engage in any business for optimum utilisation of its assets. A proportion of the revenue derived from such business shall be utilised for reducing the transmission charges. Further every transmission licensee shall maintain a separate account for each business engaged by him and the revenue derived shall not be utilised for giving subsidy to other business. The assets used in a transmission business shall not be encumbered to support any other business. Further, no transmission licensee shall trade in electricity.

Clause 42.—This clause provides for the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply. It also provides that where any person, whose premises are situated within the area of supply of a distribution licensee, requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may by notice require the distribution licensee for wheeling such electricity in accordance with the regulations made by the State Commission and the duties of such distribution licensee in respect of such supply shall be those of a common carrier providing non-discriminatory open access to its distribution system. However, open access shall be introduced in phases by the State Commission, having due regard to factors like cross-subsidies, etc. Open access may also be allowed before cross-subsidies are eliminated on payment of a surcharge in addition to wheeling charges, as may be specified by the State Commission. Such surcharge shall be utilised to meet current level of cross-subsidy, and shall be progressively reduced and eliminated. This clause also provides that every distribution licensee within six months from the appointed date or date of grant of licence, whichever is earlier shall establish a forum for redressal of grievances of the consumers.

Clause 43.—This clause provides for supply of electricity to be given to the owner or occupier of premises by a distribution licensee within one month, or within six months where such supply requires extension of distribution mains, commissioning of new substations. If a distribution licensee fails to supply electricity within the period specified above, he shall be liable for a penalty which may extend to one thousand rupees for each day of default.

Clause 44.—This clause provides for certain exceptions from duty to supply electricity as required under clause 43 if the distribution licensee is prevented from doing so by circumstances beyond his control or by cyclone, floods or storms or other occurrences beyond his control.

Clause 45.—This clause empowers the distribution licensee to recover charges for supply of electricity, in accordance with the tariffs fixed from time to time and conditions of his licence. Such charges shall be fixed by the distribution licensee in accordance with the methods and principles as may be specified by the concerned State Commission and

publish the same to give adequate publicity. Further, while fixing the charges, a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

Clause 46.—This clause empowers the distribution licensee to charge from a person requiring supply of electricity any expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply.

Clause 47.—This clause empowers the distribution licensee to seek reasonable security from any person who requires supply of electricity subject to certain conditions specified therein. The security amount so given by the person requiring a supply of electricity shall be refundable and carry interest equivalent to bank rate or more as may be specified by the concerned State Commission. However, a distribution licensee shall not be entitled to any security if the person requiring supply is prepared to take supply through a pre-payment meter.

Clause 48.—This clause imposes certain additional terms of supply requiring any person who seeks supply of electricity to accept subject to certain conditions referred to therein.

Clause 49.—This clause provides that where the Appropriate Commission has allowed open access to certain consumers under clause 42, such consumers may enter into agreement with any person for supply or purchase of electricity.

Clause 50.—This clause provides that the State Commission shall specify an Electricity Supply Code to provide for, *inter alia*, recovery of charges, disconnection for non-payment, tampering of electric lines or meters, etc.

Clause 51.—This clause provides that a distribution licensee may, with prior intimation to the concerned State Commission engage in any business for optimum utilisation of its assets. A proportion of the revenue derived from such business shall be utilised for reducing its distribution and charges for wheeling. Further, every distribution licensee shall maintain a separate account for each business engaged by him and the revenue derived shall not be utilised for giving subsidy to other business. The assets used in a distribution business shall not be encumbered to support any other business.

Clause 52.—This clause provides that the Appropriate Commission may specify the technical requirement, capital adequacy requirement and credit worthiness for being an electricity trader. It further provides that every electricity trader shall discharge duties in relation to supply of and trading in electricity which may be specified by the Appropriate Commission.

Clause 53.—This clause provides that the Authority may specify suitable measures by regulations relating to safety and electricity supply for the purposes, *inter alia*, of protecting the public including persons engaged in the generation, transmission, trading or use of electricity, eliminating or reducing the risks of personal injury, giving notice in the specified form to the Appropriate Commission and the Electrical Inspector of accidents and failure of supply or transmission of electricity.

Clause 54.—This clause provides that no person other than Central Transmission Utility, State Transmission Utility, a licensee shall transmit or use electricity at a rate exceeding two hundred and fifty watts and one hundred volts, in any street, or in any place, in which one hundred or more persons are likely ordinarily to be assembled, or which is a factory or a mine, etc.,—without giving not less than seven days' notice to the Electrical Inspector and to the District Magistrate or the Commissioner of Police, as the case may be. It further provides, *inter alia*, that the aforesaid restriction shall not apply to electricity used for the public carriage of passengers, animals or goods, on, or for the lighting or ventilation of the rolling stock of any railway or tram way subject to the provisions of the Railways Act, 1989.

Clause 55.—This clause provides that no electricity shall be supplied to any person, after the expiry of two years from the appointed date, except through a meter to be installed and operated in accordance with the regulations to be made in this behalf by the Authority. Further, a consumer who requires electricity may be required by the licensee to give security for the price of a meter and enter into an agreement with the licensee for the hire thereof, unless the consumer elects to purchase a meter. Further the State Commission is empowered to extend the period of two years by notification for a class or classes of persons or for such area as may be specified in the notification. If a person violates any of the conditions specified in this clause, the Appropriate Commission may make an order requiring the default to be made good.

Clause 56.—This clause provides that in case a person neglects to pay any sum due from him to a licensee or a generating company in respect of supply, transmission, distribution or wheeling of electricity, the licensee or the generating company shall be empowered to disconnect such supply after giving a notice of fifteen days. However, the supply of the electricity shall not be cut off if such person deposits the amount equal to the sum claimed under protest or as security pending disposal of the dispute. This clause also provides that no sum due from any person under this section shall be recoverable after a period of two years from the date when such sum became first due. Unless the same has been shown continuously as recoverable as arrears of charges for electricity supplied.

Clause 57.—This clause provides that the Appropriate Commission may, after consultation with licensees and persons likely to be affected, make regulations regarding standards of performance of a licensee or a class of licensees. It also provides that if a licensee fails to meet a specified standard, it shall pay compensation to the person affected by such failure. Such compensation shall be payable within ninety days from the date of determination by the Appropriate Commission.

Clause 58.—This clause provides that the Appropriate Commission may specify different standards for a class or classes of licensees as specified in clause 57.

Clause 59.—This clause provides that every licensee shall furnish to the Appropriate Commission information as regards to the number of cases of payment of compensation under clause 57 and the level of performance achieved under that clause. It also provides that the Appropriate Commission shall at least once in every year arrange for the publication of such information furnished to it.

Clause 60.—This clause provides that the Appropriate Commission may issue direction to a licensee or a generating company in case such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition.

Clause 61.—This clause empowers the Appropriate Commission to specify by regulation the terms and conditions for the determination of the tariff and in so doing the Commission shall be guided by, *inter alia*, the principles and methodologies specified by the Central Commission for determination of tariff for generating companies and transmission licensees, commercial principles for conducting the generation, transmission, distribution and supply of electricity, principles regarding efficiency or performance, multi-year tariff principles, progressive reduction and elimination of cross subsidies, the National Electricity Policy, etc. It also provides that the terms and conditions of tariff for sale of electricity determined under section 43A of the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule to the Bill shall continue to apply for a period of one year or till the regulations are framed under this Act, whichever is earlier.

Clause 62.—This clause provides that the Appropriate Commission shall determine the tariff for supply of electricity by a generating company to a distribution licensee. However, in case of an agreement between a generating company and a licensee or between

licensees for a period not exceeding one year, the Appropriate Commission may fix only the minimum and maximum ceiling of tariff. The Appropriate Commission shall also determine the tariff for transmission, wheeling and retail sale of electricity. The Appropriate Commission shall not show undue preference to any consumer of electricity while determining the tariff. Further, the tariff or any part thereof shall not be amended ordinarily more frequently than once in any financial year. The Appropriate Commission may require a generating company or a licensee to comply with such procedure as may be specified for calculating the expected revenues from the tariff and charges. However, if the generating company or any licensee recovers an excess amount from the consumer, the same shall be recoverable by the person who has paid such excess amount, along with the interest equivalent to the bank rates.

Clause 63.—This clause provides that notwithstanding anything contained in clause 62, the Appropriate Commission may adopt the tariff determined through process of bidding.

Clause 64.—This clause provides for the procedure to be determined by the Appropriate Commission in respect of tariff order. It provides that every applicant who seeks determination of tariff under section 62 shall file an application along with requisite fees and publish the same into two leading newspapers circulating in India. The Appropriate Commission shall publish a draft tariff order inviting suggestions and objections. The Appropriate Commission shall within one hundred and twenty days from the date of receipt of application either issue a tariff order or reject the same for reasons to be recorded in writing. A copy of the aforesaid order shall be sent to Appropriate Government the Authority and the concerned licensee by the Appropriate Commission within seven days of making the order. This clause also provides that a tariff order shall continue to be in force for the specified period unless amended or revoked.

Clause 65.—This clause provides that where the State Government requires the grant of any subsidy to any consumer or class of consumers, it shall pay in advance and in the manner as may be specified, the amount to compensate the person affected by the grant of subsidy in such manner as the State Commission may direct. However, the directions of the State Government shall not be operative if the payment is not made in the aforesaid manner and the tariff fixed by the State Commission shall be applicable from the date of issue of order by it.

Clause 66.—This clause provides that the Appropriate Commission shall endeavour to promote the development of a market including trading in electricity in such manner as may be specified.

Clause 67.—This clause provides that a licensee, subject to the terms and conditions of his licence, may carry out works *inter alia* as to open and break up the soil, street, railway, sewer, drain or funnel and do all other acts necessary for transmission or supply of electricity. It further empowers the Appropriate Government to prescribe by rules, *inter alia*, the authority for granting of permission where the owner or the occupier objects to the carrying out of the works; the procedure and manner of consideration of objection and suggestions etc. This clause also provides that licensee shall in exercise of any of the powers conferred under this cause as little damage, detriment and inconvenience and shall make full compensation for any damage detriment and inconvenience. Where any dispute arises under this section the matter shall be determined by the Appropriate Commission.

Clause 68.—This clause provides for installation of overhead lines with the approval of Appropriate Government and subject to certain conditions specified in that clause. It further provides that where any tree standing or lying near an overhead line or where any structure or other object has been placed or has fallen near an overhead line subsequent to the placing of such line, the Executive Magistrate or authority specified by the Appropriate Government, may on an application cause the tree or object to be removed or dealt with as he thinks fit.

Clause 69.—This clause requires a licensee, before laying down or placing, within ten meters of any telegraph line, any electric line, electrical plant or other works, to submit a proposal to an authority to be designated by the Central Government in case of a new installation, and to give notice to the telegraph authority in case of repair, renewal or amendment or existing, specify the course of the work or alterations proposed, the manner in which works are to be utilised, the amount and nature of the electricity to be transmitted and the extent and the manner in which earth returns are to be used.

Clause 70.—This clause deals with the constitution of the Central Electricity Authority. It also provides that the Central Electricity Authority established under section 3 of the Electricity (Supply) Act, 1948 and functioning as such immediately before the appointed date shall be the Central Electricity Authority for the purposes of the proposed legislation and the Chairperson and Members, Secretary and other officers and employees thereof shall be deemed to have been appointed under the proposed legislation and they shall continue to hold office on the same terms and conditions on which they were appointed under that Act. The Authority under the proposed legislation shall consist of not more than fourteen Members of whom not more than eight shall be full time members to be appointed by the Central Government. It also provides, *inter alia*, for qualification for a Member of the Authority

Clause 71.—This clause provides that a Member of the Authority shall not have any share or interest whether in his own name or otherwise, in any company or other body corporate or an association of persons or a firm engaged in the business of generation, transmission, distribution and trading in electricity.

Clause 72.—This clause provides for the appointment of the Secretary, officers and employees of the Authority for discharge of functions under the proposed legislation. The salary, remuneration and other terms and conditions shall be fixed by the Authority in consultation with the Central Government.

Clause 73.—This clause provides for the functions and duties of the Authority. The functions *inter-alia* shall be to advise the Central Government on matters relating to National Electricity Policy, formulate short term and perspective plan and development of electricity system; specify the technical specification and safety standards for construction of electrical plants and electrical lines; specify the conditions for installation of meters; specify the Grid Standards for operation and maintenance of transmission line. This clause also provides that the Authority shall advise State Government, licensees or the generating companies on such matters which shall enable them to operate and maintain the electricity system in an improved manner besides advising the State, Central Government and Regulatory Commissions on all technical matters relating to generation, transmission and distribution of electricity.

Clause 74.—This clause provides that the State Government, licensee and generating company shall furnish to the Authority such statistics, return or other information relating to generation, transmission, distribution and trading of electricity.

Clause 75.—This clause provides that the Authority shall be guided by such directions in matters of policy involving public interest as the Central Government may give in writing. It also provides that if any question arises as to whether any such direction is a matter of policy, the decision of the Central Government shall be final.

Clause 76.—This clause provides for constitution of the Central Electricity Regulatory Commission. The Central Commission shall consist of a Chairperson and three other Members. The Chairperson of Central Electricity Authority shall be *ex-officio* Member of the Central Commission. It further provides that the Central Electricity Regulatory Commission established under section 3 of the Electricity Regulatory Commissions Act, 1998 and functioning as such immediately before the appointed date shall be deemed to be the Central Commission for the purpose of the proposed legislation and the Chairperson and Members, Secretary, officers and employees thereof shall be

deemed to have been appointed under the proposed legislation and they shall continue to hold office on the same terms and conditions on which they were appointed under that Act. It further provides that the Chairperson and Members of the Central Commission shall be appointed by the Central Government on the recommendations of the Selection Committee specified in clause 78 of the Bill.

Clause 77.—This clause provides for the qualifications for appointment of Chairperson and Members of the Central Commission. The Members shall be persons having adequate knowledge of, experience in or shown capacity in dealing with the problems relating to engineering, law, economics, commerce, finance or management and shall be appointed so as to have one person having qualification and experience in the field of engineering with specialisation in generation, transmission and distribution of electricity, one Member having qualification and experience in the field of finance and two persons having qualification and experience in the field of economics, commerce, law or management. This clause also provides notwithstanding the said qualifications, the Central Government may appoint any person as a Chairperson from amongst persons who is or has been a judge of Supreme Court or the Chief Justice of a High Court.

Clause 78.—This clause provides for constitution of Selection Committee for appointment of Members of the Appellate Tribunal and Chairperson and Members of the Central Commission. The Selection Committee shall consist of Member of the Planning Commission as Chairperson of the Selection Committee, Secretary, Department of Legal Affairs, the Chairman, Public Enterprises Selection Board, or Chairman or Managing Director of any Public Financial Institution specified in section 4A of the Companies Act, 1956 as nominated by the Central Government, Director or Head of the Institution which deals with Research Technical or Management Institution as nominated by the Central Government and Secretary in-charge of the Ministry of the Central Government dealing with Power as Members. The Secretary in the Ministry of Power shall be the Convenor of the Committee. It also provides *inter alia* that the Selection Committee shall recommend a panel of two names for every vacancy referred to it. Before recommending any person for appointment, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially its function as Member.

Clause 79.—This clause lays down the functions of the Central Commission. The mandatory functions, *inter-alia* shall be—to regulate the tariff of generating companies owned or controlled by the Central Government; to regulate tariff of generating companies other than those owned or controlled by the Central Government specified above, if such generating companies have a composite scheme for generation and sale of electricity in more than one State; to regulate the inter-State transmission of electricity to determine tariff for inter-state transmission of electricity, issue licences to persons to function as transmission licensee and electricity traders with respect to their inter-state operations; relating to adjudicate upon disputes involving Generating Companies or Transmission Licensees and to refer any dispute for arbitration to levy fees for the purposes of the Act. The advisory functions, *inter-alia* include giving advice on formulation of National Electricity Policy, promotion of competition, efficiency and investment in electricity industry. This clause also provides that the Central Commission shall ensure transparency while exercising its powers and discharging its functions and shall be guided by the National Electricity Policy.

Clause 80.—This clause provides for the establishment of a Central Advisory Committee consisting of not more than thirty one members to represent the interest of commerce, industry, consumers, non-governmental organisations and academic and research bodies in the electricity sector. The Chairperson and the Members of the Central Commission shall be the *ex officio* Chairperson and *ex officio* Members of the Central Advisory Committee. Secretary to the Government of India in-charge of Ministry or Department of the Central Government dealing with Consumer Affairs and Public Distribution shall also be *ex officio* Members of the Committee.

Clause 81.—This clause provides that objects of the Central Advisory Committee shall be, to advise the Central Commission on major questions of policies, matter relating to quality, continuity and extent of service provided by the licensees, compliance by the licensees with the condition and requirements of their licence protection of the consumer's interests and electricity supply and overall standards of performance by utilities.

Clause 82.—This clause provides for the establishment of the State Commission by the State Government within a period of six months from the appointed date. However, the State Electricity Regulatory Commission established by a State Government under section 17 of the Electricity Regulatory Commissions Act, 1998 and functioning as such immediately before the appointed date shall be deemed to be the State Commission for the purposes of the proposed legislation and the Chairperson and Members, Secretary, Officers and other employees shall be deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed under that Act. Further, the State Electricity Regulatory Commission established under the provisions of the Acts as listed in the Schedule to the proposed legislation shall be the State Electricity Regulatory Commission established under the proposed legislations. The State Commission shall consist of three Members including the Chairperson. The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendations of the Selection Committee.

Clause 83.—This clause provides for establishment of the Joint Commission by an agreement to be entered into between two or more Governments of States or by the Central Government in respect of one or more Union territories, and one or more Government of States or Union territories. Further the agreement referred above shall contain provisions, *inter alia*, as to the name of the Joint Commission, the manner in which the participating States may be associated in the selection of Chairperson and Members, the expenditure in connection with the Joint Commission and also contain other supplemental, incidental and consequential provisions. This clause also provides that the Joint Commission shall consist of as many Members as the number of participating States or Union territories. It also provides that the Joint Commission shall determine tariff for participating States or Union territories separately and independently.

Clause 84.—This clause provides for qualifications for appointment of Members of State Commission. The Members shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in dealing with the problems relating to engineering, finance, commerce, economics, law or management. This clause provides that notwithstanding any prescribed qualifications, the State Government may appoint any person as the Chairperson from amongst persons who is or has been a Judge of a High Court.

Clause 85.—This clause provides for constitution of Selection Committee consisting of a person who is or has been a High Court Judge as Chairperson, Chief Secretary of the State and the Chairperson or a Member of the Central Electricity Authority as Members. This clause also provides *inter alia* that the Selection Committee shall recommend a panel of two names for every vacancy referred to it. It also provides that before recommending any person for appointment the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially its function as Member.

Clause 86.—This clause lays down the functions of the State Commission. The mandatory functions *inter alia* are to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person; and also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee to specify by regulations the terms and conditions for determination of tariff for supply, transmission and wheeling of electricity within the State to regulate electricity purchase and procurement process of distribution licensees including the price at which the electricity shall be procured; to facilitate intra State transmission and wheeling of electricity; to issue licences to persons seeking to act as distribution licensees, transmission

licensee and electricity traders; to adjudicate upon disputes and the differences between the licensees and generating companies and refer any dispute for arbitration; to levy fees for the purposes of the proposed legislation. The advisory functions, *inter alia*, include giving advice on promotion of competition efficiency, investment in electricity industry reorganisation and restructuring of electricity industry.

Clause 87.—This clause provides for the establishment of State Advisory Committee consisting of not more than twenty one Members to represent the interest of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations, academic and research bodies in the electricity sector. The Chairperson of the State Commission shall be the *ex officio* Chairperson of the State Advisory Committee and the Members of that Commission and Secretary to the State Government in-charge of the Ministry or Department dealing with the Consumers Affairs and Public Distribution System shall be Members of the Committee.

Clause 88.—This clause provides that the objects of the State Advisory Committee shall be, to advise the State Commission on major questions of policy, matters relating to quality, continuity and extent of service provided by the licensees, compliance by licensees with the conditions and requirements of their licence, protection of consumer interest and electricity supply and overall standards of performance by utilities.

Clause 89.—This clause provides for the term of office, salary and allowances and other conditions of service of Chairperson and Members of the appropriate Commission. This clause *inter alia*, provides that the Chairperson or other Member shall hold office for a term of three years and shall be eligible for re-appointment for another term of three years but shall not hold office as such after he has attained the age of sixty five years. Further, a member shall before entering upon his office make and subscribe to an oath of office and secrecy in such form and in such manner as may be prescribed by the Appropriate Government. This clause *inter alia* also provides that any member ceasing to hold office shall be ineligible for further employment under the Central Government or any State Government for a period of two years from the date he ceases to hold such office and also not accept any commercial employment for two years.

Clause 90.—This clause provides for removal of Members of the Central and State Commission. It provides that the Central Government in the case of a member of Central Commission and the State Government of the State in the case of State Commission may by order remove from office any Member, if he (a) has been adjudged insolvent, (b) has been convicted of an offence involving moral turpitude, (c) has become physically or mentally incapable of acting as a Member, (d) has acquired such financial or other interest as is likely to affect prejudicially his function as a Member, (e) has so abused his position as to render his continuance in office prejudicial to the public interest, or (f) has been guilty of proved misbehaviour. No Member of the Central Commission including the Chairperson shall be removed from office on the grounds mentioned in (d), (e) & (f) above, unless the Chairperson of the Appellate Tribunal has carried out an investigation and forwarded report to the Central Government who may remove from office the Chairperson or Member of the Central Commission. Similarly, no Member of the State Commission including Chairperson shall be removed from office on the grounds mentioned in (d), (e) & (f) above, until the Chairperson of the Appellate Tribunal has carried out an investigation and forwarded a report to the State Government who may remove from office the Chairperson or Members of the State Commission.

Clause 91.—This clause contains provisions regarding the appointment of the Secretary, staff, officers and consultants of the Appropriate Commission. Approval of the Appropriate Government is required for determining the number, nature and category of posts for the Appropriate Commission.

Clause 92.—This clause contains the provisions relating to the proceedings of the Appropriate Commission. The Appropriate Commission shall have power to frame the

matters before the Appropriate Commission shall be decided by a majority and in case of equality of votes, the Chairman shall have a casting vote.

Clause 93.—This clause provides that the vacancies or defect etc. in the Constitution of the Selection Committee shall not invalidate any act or proceedings of the Appropriate Commission.

Clause 94.—This clause lays down the powers of the Appropriate Commission. The Commission shall have powers as are vested in Civil Court under the Code of Civil Procedure, 1908 in respect of *inter alia* summoning and enforcing the attendance of any witness, discovery and production of document, reception of evidence on affidavits etc.

Clause 95.—This clause provides that all the proceedings before the Appropriate Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appropriate Commission shall be deemed to be a Civil Court for the purposes of section 345 and 346 of the Code of Criminal Procedure, 1973.

Clause 96.—This clause provides for the powers of entry and seizure by the Appropriate Commission. It provides that the Appropriate Commission or any officer not below the rank of a Gazetted officer specially authorised in this behalf by the Commission shall have the powers to enter any building or place and also seize any documents or extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973.

Clause 97.—This clause provides that the Appropriate Commission may by general or special order in writing delegate to any Members, Secretary officers of the Appropriate Commission or any other person subject to such conditions as may be specified in the order confer such of its powers and functions (except the power to settle disputes under clauses 79 and 86 and powers to make regulations under clauses 173 and 176) as it may deem necessary.

Clause 98.—This clause provides that the Central Government, after due appropriation made by Parliament by Law make to the Central Commission grants and loans.

Clause 99.—This clause contains provisions for the establishment and operation of the Central Electricity Regulatory Commission Fund by the Central Government. This clause *inter alia* provides that there shall be credited all grants and loans which may be made by the Central Government, fees received by the Central Commission, sums by the Central Commission from such other sources and it shall be applied for meeting the expenses incurred by the Central Commission in discharge of its function under the proposed legislation. The Fund shall, *inter alia*, also be administered for objects and for the purposes authorised by the proposed legislation.

Clause 100.—This clause provides for maintenance by Central Commission, proper accounts and other relevant records in the prescribed form and in consultation with the Comptroller and Auditor General of India. It also provides that the accounts of the Central Commission shall be audited by the Comptroller and Auditor General of India or any person appointed by him. The accounts as certified by the Comptroller and Auditor General shall be forwarded annually to the Central Government for the purpose of laying before each House of Parliament.

Clause 101.—This clause provides that the Central Commission shall prepare annual report in the prescribed form, giving a summary of its activities during the previous year and forward the same to the Central Government for the purpose of laying before each House of Parliament.

Clause 102.—This clause provides that the State Government, after due appropriation, by law, made by Legislature of State, make to the State Commission grants and loans.

Clause 103.—This clause contains provisions for the establishment and operation of the State Electricity Regulatory Commission Fund by the State Government. This clause *inter alia* provides that there shall be credited all grants and loans which may be made by the State Government, fees received by the State Commission, sums by the State Commission

Clause 103.—This clause contains provisions for the establishment and operation of the State Electricity Regulatory Commission Fund by the State Government. This clause *inter alia* provides that there shall be credited all grants and loans which may be made by the State Government, fees received by the State Commission, sums by the State Commission from such other sources and it shall be applied, *inter alia*, for meeting the expenses incurred by the State Commission in discharge of its functions under the proposed legislation. The fund shall also be administered *inter alia* for the objects and for the purposes authorised by the proposed legislation.

Clause 104.—This clause provides for maintenance by State Commission, of proper accounts and other relevant records in the prescribed form and in consultation with the Comptroller and Auditor-General of India. It also, *inter alia*, provides that the accounts of the State Commission shall be audited by the Comptroller and Auditor-General of India or any person appointed by him. The accounts as certified by the Comptroller and Auditor-General of India shall be forwarded annually to the State Government for the purpose of laying before State Legislature.

Clause 105.—This clause provides that the State Commission shall prepare annual report in the prescribed form, giving summary of its activities during the previous year and forward the same to the State Government for the purpose of laying before State Legislature.

Clause 106.—This clause provides that the Appropriate Commission shall prepare its Budget in such form as may be prescribed showing the estimated receipt and expenditure of that Commission and forward the same to the Appropriate Government.

Clause 107.—This clause seeks to confer power upon the Central Government to issue directions in writing to the Central Commission on questions of policy and that Commission shall be bound by such directions. If any question arises as to whether such direction relates to a matter of policy involving public interest, the decision of the Central Government shall be final.

Clause 108.—This clause seeks to confer power upon the State Government to issue directions in writing to the State Commission on questions of policy and that Commission shall be bound by such directions. If any question arises as to whether such directions relate to a matter of policy involving public interest, the decision of the State Government shall be final.

Clause 109.—This clause provides for a special provision relating to giving directions where any Joint Commission has been established. It further provides that the Government of the State for which the Joint Commission is established shall be competent to give any direction under the proposed legislation only when any matter falls within exclusive territorial jurisdiction of that State. In case the directions relates to a matter falling within the territorial jurisdiction of two or more States or pertaining to a Union territory, the Central Government alone shall be competent to give any direction under the proposed legislation.

Clause 110.—This clause provides for establishment of an Appellate Tribunal by the Central Government to hear appeals against the orders of Adjudicating Officer or the Appropriate Commission.

Clause 111.—This clause provides that any person aggrieved by an order of Adjudicating Officer or the Appropriate Commission may prefer an appeal before the Appellate Tribunal within forty five days from the date on which a copy of the order made by Adjudicating Officer or the Appropriate Commission was received by the aggrieved person subject to condonation by the Appellate Tribunal. It further provides, *inter alia* the manner of dealing with the appeal.

Clause 112.—This clause provides for the composition of Appellate Tribunal. It provides that Appellate Tribunal shall consist of a Chairperson and such number of Members not exceeding three as the Central Government may deem fit. It also provides *inter alia* that

appointment as Chairperson of Appellate Tribunal unless he is or has been a Judge of the Supreme Court or Chief Justice of a High Court. It further provides, *inter alia* that the Members of the Appellate Tribunal shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in clause 78.

Clause 114.—This clause provides for the terms of office of Chairperson and the Members of Appellate Tribunal. It provides the term of three years with a further provision of re-appointment for a second term of three years. No Chairperson of Appellate Tribunal shall hold office if he has attained the age of seventy years and a Member shall hold office after he has attained the age of sixty five years.

Clause 115.—This clause provides for terms and conditions of service of the Chairperson and Members of the Appellate Tribunal. It provides that the terms and conditions of service shall be prescribed by the Central Government. The salary and allowances and terms and conditions of service shall not be varied to the disadvantage of Chairperson or Members after appointment.

Clause 116.—This clause provides that in case of vacancy, the Central Government shall appoint another person in accordance with the provisions of the proposed legislation to fill the vacancy and proceedings may be continued from the stage at which vacancy is filled.

Clause 117.—This clause provides for the resignation and removal of Chairperson or Member of the Appellate Tribunal. It provides that Chairperson or Member may resign office by notice in writing to the Central Government. It also provides that a Chairperson or a Member of the Appellate Tribunal shall not be removed from his office except by an order of the Central Government on the ground of proved misbehaviour or in capacity after an inquiry made by a Judge of the Supreme Court as the Central Government may appoint for this purpose.

Clause 118.—This clause provides that in the event of occurrence of any vacancy in the office of the Chairperson or if the Chairperson is unable to discharge the function owing to absence, illness or any other cause the senior most Member of the Appellate Tribunal shall act as Chairperson.

Clause 119.—This clause provides that Central Government shall provide such officers and other employees as it may deem fit and their salaries and allowances and other conditions of service shall be as may be prescribed.

Clause 120.—This clause provides for the procedure and powers of the Appellate Tribunal. The Appellate Tribunal shall have power to regulate its own procedure. Further the Appellate Tribunal shall have powers of Civil Court in the matter, *inter alia*, of summoning and enforcing the attendance, discovery or production of documents, receiving evidence on affidavits etc. It also provides that all proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 288 of India Penal Code.

Clause 121.—This clause empowers the Chairperson of the Appellate Tribunal to exercise general power of superintendence and control over the Appropriate Commission.

Clause 122.—This clause provides that the Chairperson of the Appellate Tribunal may by notification make provisions for the distribution of business of Appellate Tribunal among the benches. It further empowers the Chairperson of the Appellate Tribunal to transfer any case pending before one bench for disposal to any other bench.

Clause 123.—This clause provides that decisions of the Appellate Tribunal shall be by majority of members.

Clause 124.—This clause provides that a person preferring an appeal before the Appellate Tribunal may either appear in person or take the assistance of a legal practitioner

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Clause 124.—This clause provides that a person preferring an appeal before the Appellate Tribunal may either appear in person or take the assistance of a legal practitioner to present his case.

Clause 125.—This clause provides that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court.

Clause 126.—This clause provides that if an assessing officer on an inspection comes to the conclusion that a person is indulging in unauthorised use of electricity, he shall provisionally assess the electricity charges payable by such person. The order of provisional assessment shall be served upon the person concerned, who shall be entitled to file any objection before the assessing officer who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person. It further provides, *inter alia*, that any person served with the order of provisional assessment may accept such assessment and deposit the assessed amount with the licensee within seven days of service of such order.

Clause 127.—This clause provides for an appeal by any person aggrieved by a final order of the assessing officer to the adjudicating officer within a period of thirty days of the order. It also provides that no appeal shall be entertained unless an amount equal to one third of the assessed amount is deposited with the licensee. The order of the adjudicating officer shall be final.

Clause 128.—This clause provides that the Appropriate Commission on being satisfied that a licensee has failed to comply with any of the conditions of licence or a generating company or a licensee has failed to comply with any of the provisions of the proposed legislation or rules or regulations made thereunder may direct any person referred as Investigating Authority to investigate the affairs of any licensee and report to that Commission. The Investigating Authority may cause an inspection of books of account, examine on oath any Manager, managing director or other officer of the licensee. It further provides *inter alia* that on receipt of report the Appropriate Commission may after giving such opportunity to the licensee to make a representation as it considers reasonable, require the licensee to take such action as it thinks fit. It also provides that licensee shall defray all expenses and incidental to investigation.

Clause 129.—This clause provides that if a licensee contravenes or is likely to contravene any condition stated in the licence or any generating company or the licensee has contravened or is likely to contravene any of the provisions of the proposed legislation, the Appropriate Commission shall give orders for securing compliance with such conditions or provisions. It also provides for the making of a final order or confirming the provisional order in this regard subject to the conditions mentioned in that clause.

Clause 130.—This clause provides that the Appropriate Commission before issue of any directions under clause 129 shall serve notice in the manner as may be specified to the concerned licensee, publish the notice in the manner as may be specified for the purpose of bringing the matters to the attention of persons likely to be affected or affected, consider suggestions and objections from the concerned licensee and the persons likely to be affected or affected.

Clause 131.—This clause provides for re-organisation of the State Electricity Board and matters connected therewith.

Clause 132.—This clause provides that in the event that the Board or any utility owned or controlled by the Appropriate Government is sold or transferred in any manner to a person who is not owned or controlled by the Appropriate Government, the proceeds thereof shall be utilised in the following order, namely:—

(a) dues (including retirement benefits) to the officers and employees who have been affected by the aforesaid sale or transfer; and

(b) payment of debt or other liabilities of the transferor company as required by the existing loan covenants.

Clause 133.—This clause provides for the transfer of the officers and other employees of the State Electricity Board consequent upon reorganisation of the Board. The clause further provides the terms and conditions of the service of personnel of the Board upon transfer under the transfer scheme, shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer.

Clause 134.—This clause provides that notwithstanding anything contained in the Industrial disputes Act, 1947 or any other law for the time being in force and except for the provisions made under the proposed legislation the transfer of the employment of the officers and other employees referred to in sub-clause (1) of clause 133 shall not entitle such officers and other employees to any compensation or damages under the proposed legislation or any other Central or State law, save as provided in the transfer scheme.

Clause 135.—This clause deals with theft of electricity. It provides that whoever dishonestly indulges in theft of power by adopting the means as specified in that clause, shall be punishable with imprisonment for a term which may extend to three years or fine or with both. This clause also provides that for theft of electricity involving load abstraction not exceeding 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft and in the event of second or subsequent conviction, the fine imposed shall not be less than six times the financial gain on account of such theft. Similarly for theft of electricity involving load abstraction or consumption exceeding 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months and with fine not to be less than six times the financial gain on account of such theft. This clause further provides *inter alia* that without prejudice to the provisions of the Code of Criminal Procedure, 1973 relating to search and seizure any person authorised by Appropriate Government may enter, any premises inspect and search vehicle or other place and may use such minimum force as may be necessary, seize any means used for theft of electricity, require the owner, occupier to produce any books of account etc.

Clause 136.—This clause deals with theft of electric lines and material. It provides that whoever dishonestly indulges in theft of electric lines and materials by adopting means as mentioned in that clause shall be punishable with imprisonment for a term which may extend to three years or with fine or both. It also provides that a person, shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall be liable to fine which shall not be less than ten thousand rupees.

Clause 137.—This clause provides that whoever dishonestly receives any stolen electric lines or materials knowing or having reasons to believe the same to be stolen property shall be punishable with imprisonment which may extend to three years or with fine or with both.

Clause 138.—This clause deals with punishment for interference with meters or works of licensee. It provides that whoever unauthorisedly connects or reconnects or injures any meter, indicator or apparatus with any electrical lines or improperly uses electricity shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees or with both and in the case of a continuing offence, with a daily fine which may extend to five thousand rupees.

Clause 139.—This clause provides that a person negligently wasting electricity or injuring works shall be punishable with fine, which may extend to ten thousand rupees.

Clause 140.—This clause provides that a person maliciously wasting electricity or injuring works shall be punishable with an imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees or with both.

Clause 141.—This clause provides that whoever maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

Clause 142.—This clause deals with punishment for non-compliance of direction given by the Appropriate Commission. It provides that in case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any directions issued by the Commission under the proposed legislation the Commission after giving such person an opportunity of being heard, by order in writing direct that such person shall pay by way of penalty which shall not exceed rupees one lakh for each contravention and in case of a continuing failure with an additional penalty which may extend to rupees six thousand for every day during which the failure continues.

Clause 143.—This clause provides that for the purpose of adjudging the proposed legislation. The Appropriate Commission shall appoint any of its members to be an Adjudicating Officer for holding an enquiry in such manner as may be prescribed by Appropriate Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

Clause 144.—This clause provides for the factors to be taken into account by Adjudicating Officer. It provides that while adjudicating the quantum of penalty, the Adjudicating Officer shall have due regard to the amount of disproportionate gain or unfair advantage and the repetitive nature of default.

Clause 145.—This clause provides that no civil courts shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in clause 126 and the Adjudicating Officer appointed under the proposed legislation is empowered to determine and no injunction shall be granted by any Court or authority in respect of any action taken in pursuance of any power under this Act.

Clause 146.—This clause provides that if any person fails to comply with any order or direction under proposed legislation within such time as may be specified in the said order or contravenes or attempts or abets the contravention of any of the provisions of the proposed legislation or any rules or regulations made thereunder shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees or with both in respect of each offence and in the case of a continuing failure with an additional fine which may extend to five thousand rupees for every day during which such failure continues after conviction of first such offence.

Clause 147.—This clause provides that the penalties imposed under the proposed legislation shall be in addition to and not in derogation of, any liability in respect of payment of compensation or, in the case of a licensee, the revocation of his licence which the offender may have incurred.

Clause 148.—This clause provides that the provisions of the proposed legislation shall so far as they are applicable, be deemed to apply also when the acts made punishable thereunder are committed in the case of electricity supplied by or of works belonging to the Appropriate Government.

Clause 149.—This clause deals with punishment for offence committed by companies. It provides that where an offence under the proposed legislation has been committed by a company, every person who at the time when offence is committed was in-charge of the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly. It further provides that such person or company shall not be liable to any punishment if he proves that the offence is committed

without his knowledge and that he had exercised all due diligence to prevent the commission of such offence.

Clause 150.—This clause provides for punishment for years abetting offence punishable under the proposed legislation.

Clause 151.—This clause provides that no court shall take cognizance of an offence punishable under the proposed legislation except upon a complaint in writing made by Appropriate Government or Appropriate Commission or a Chief Electrical Inspector or an Electrical Inspector or Licensee or the generating company, as the case may be, for this purpose.

Clause 152.—This clause provides for compounding of offences. It provides that Appropriate Government or any officer authorised by it may accept from any consumer or person who committed or is reasonably suspected of having committed an offence of theft of electricity, a sum of money by way of compounding of offence as specified in the table provided in this clause. Such compounding of offence shall be allowed only once for a consumer.

Clause 153.—This clause provides that where any matter is, by or under the proposed legislation directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the licence of a licensee, be determined by such person or persons as the Appropriate Commission may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

Clause 154.—This clause provides that no person shall, in the generation, transmission, distribution, supply or use of electricity, in any way injure any railway, highway, aerodrome, tramway, canal or water-way or any dock, wharf or pier vested in or controlled by a local authority, or obstruct or interfere with the traffic on any railway, airway, tramway, canal or water-way.

Clause 155.—This clause provides that every person, generating, transmitting, distributing supplying or using electricity (hereinafter referred to as an operator) shall take all reasonable precautions in constructing, laying down and placing the electricity lines or electrical plant etc. so as not injuriously to affect the working of any wire or line used for the purpose of telegraphic, telephone or electric signalling communication. Where any difference or dispute arises between the operator and the telegraphic authority in this regard, the matter shall be referred to the Central Government for decision and suitable direction. Where any operator makes default in complying with the requirements of the section, they shall make full compensation for any loss or damage incurred.

Clause 156.—This clause provides for the giving of notice of accidents occurring in connection with the generation, transmission, supply or use of electricity in or in connection with any part of the electric lines or electrical plant, to the Electrical Inspector or such other person as aforesaid and such other authorities as the Appropriate Government may by general or special order, direct. The Appropriate Government may if it thinks fit require any electrical Inspector or any other person appointed by it in this behalf, to enquire and report as to the cause of any such accidents or as to the manner and extent to which the provisions of the proposed legislation relating to safety have been complied with. This clause also provides that every Electrical Inspector or other person holding an enquiry under this clause shall have all powers of Civil Court under the Code of Civil Procedure, 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects.

Clause 157.—This clause deals with appointment of Chief Electrical Inspector and the Electrical Inspectors who shall exercise the powers and perform functions within such areas or in respect of such class of works and electric installations and subject to such restrictions as the Appropriate Government may direct.

Clause 158.—This clause empowers a licensee to enter any premises to which electricity is or has been supplied by him, to inspect, test, repair or alter the electric supply lines, meters etc, to ascertain the amount of electricity supply or to remove where a supply of electricity is

no longer required or where the licensee is authorised to take away and cut off such supply, in electric supply lines, meters etc. belonging to the licensee. This clause also provides that the licensee or any authorised person, in pursuance of a special order in this behalf made by an Executive Magistrate and after giving not less than twenty-four hours notice in writing to the occupier, enter any premises or land for purposes mentioned above. This clause provides that where a consumer refuses to allow a licensee or any authorised person to enter his premises or land, the licensee may after the expiry of twenty-four hours from the service of the notice, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer.

Clause 159.—This clause provides for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications and confer upon any public officer, licensee or any other person engaged in the business of supplying of electricity under the proposed legislation, any of the powers of the Telegraph Authority.

Clause 160.—This clause provides that the term "work" used in sections 40 and 41 of the Land Acquisition Act, 1894 shall be deemed to include electricity supplied or to be supplied by means of the work to be constructed.

Clause 161.—This clause provides for constitution of a coordination forum and a forum of regulators by the Central Government for smooth and coordinated development of the power system in the country. The coordination forum shall consist of the Chairperson of the Central Commission, Chairperson of the Authority, representatives of the Central generating and transmission companies while the forum of regulators shall consist of the Chairperson of the Central Commission and Chairpersons of the State Commissions. This clause also provides for constitution of a coordination forum by the State Government consisting of the Chairperson of the State Commission, representatives of the generating, transmission and distribution companies. It also provides for constitution of a committee in each district, by the Appropriate Government, to coordinate and review the extension of electrification in each district, to review the quality of power supply and consumer satisfaction and to promote energy efficiency and conservation.

Clause 162.—This clause provides that where any electric lines or electrical plant belonging to a licensee are placed in or upon any premises or land not being in the possession of the licensee, such electric lines or electrical plant shall not be liable to be taken in execution under any process of any civil court or in any proceedings in insolvency against the person in whose possession the same may be.

Clause 163.—This clause provides for protection of action taken in good faith by the Appropriate Government and its officers, or the Appellate Tribunal, its Chairperson, Members, officers and other employees or the Appropriate Commission, its Chairperson, Members, Secretary, officers and other employees or the assessing officer or any public servant.

Clause 164.—This clause provides that the Chairperson, Members and officers and other employees of the Appellate Tribunal and the Appropriate Commission and the assessing officer referred to in clause 126 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 165.—This clause provides that any amount payable by a person under the proposed legislation if not paid, may be recovered as if it were an arrear of land revenue.

Clause 166.—This clause provides for the procedure of service of notice, orders or documents under the proposed legislation. Every notice, order, or document by or under the proposed legislation may be served on any person by delivering the same after obtaining signed acknowledgement receipt or by registered post or such means of delivery as may be prescribed.

Clause 167.—This clause deals with transitional provisions consequent on re-organisation of the State Electricity Board. It provides that a State Electricity Board shall be deemed to be the State Transmission Utility and a licensee under the proposed legislation for a period of one year from the appointed date or such earlier date as the State Government

one year from the appointed date or such earlier period as may be notified by the Appropriate Government continue to operate as if the repealed laws were in force and such licences, authorisation etc. shall be deemed to be licences, authorisations, approvals, clearances and permissions under the proposed legislation. The undertaking of the State Electricity Board shall after the expiry of the period specified above shall be transferred to and vested in the company or companies in accordance with the provisions of Part XIII of the proposed legislation. This clause further provides that State Government may by notification declare that any or all the provisions contained in the proposed legislation shall not apply in that State for such period not exceeding six months from the appointed date as may be stipulated in that notification.

Clause 168.—This clause provides that no provision of the proposed legislation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962.

Clause 169.—This clause provides that save as otherwise provided in clause 168, the provisions of the proposed legislation, shall have overriding effect on any other law for the time being in force.

Clause 170.—This clause provides that the provisions of the proposed legislation shall be in addition to and not in derogation of any other law for time being in force.

Clause 171.—This clause empowers the Central Government to make rules for carrying out the provisions of the proposed legislation.

Clause 172.—This clause empowers the Authority to make regulations consistent with the proposed legislation and rules made thereunder to carry out the provisions of this Act.

Clause 173.—This clause empowers the Central Commission to make regulations consistent with the proposed legislation and rules made thereunder to carry out the provisions of this Act.

Clause 174.—This clause provides that every rule made by the Central Government, regulations made by the Authority and the Central Commission shall be laid before each House of the Parliament.

Clause 175.—This clause empowers the State Government to make rules for carrying out the provisions under the proposed legislation.

Clause 176.—This clause empowers the State Commission to make regulations consistent with the proposed legislation and rules made thereunder to carry out the provisions of the proposed legislation.

Clause 177.—This clause provides that every rule made by the State Government and every regulation made by the State Commission shall be laid before the State Legislature.

Clause 178.—This clause empowers the Central Government to issue orders as may be necessary for removing the difficulties in the implementation of the proposed legislation within a period of two years from the date of commencement of the proposed legislation.

Clause 179.—This clause provides that the provisions of the proposed legislation shall not apply to the Ministry or Department of the Central Government dealing with Defence, Atomic Energy or such other similar Ministries or Departments or undertakings or Boards etc. as may be notified by the Central Government.

Clause 180.—This clause seeks to repeal of the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 and save certain matters specified in that clause.

FINANCIAL MEMORANDUM

Clause 26 of the Bill Provides that the Central Government may establish a centre at the national level to be known as the National Load Despatch Centre. It is also provided that the National Load Despatch Centre shall be operated by a Government Company or any authority or corporation established by or under the Central Act, as may be notified by the Central

FINANCIAL MEMORANDUM

Clause 26 of the Bill Provides that the Central Government may establish a centre at the national level to be known as the National Load Despatch Centre. It is also provided that the National Load Despatch Centre shall be operated by a Government Company or any authority or corporation established by or under the Central Act, as may be notified by the Central Government. The constitution of the National Load Despatch Centre may thus involve expenditure out of the Consolidated Fund of India. But it is not possible to quantify the expenditure in this regard until the constitution and functions are finalised by the Central Government.

2. Clause 110 provides for establishment of the Appellate Tribunal of Electricity. Clause 115 further provides that the salary and allowances payable to and other terms and conditions of the services of the Chairman of the Appellate Tribunal, Member of the Appellate Tribunal shall be such as may be prescribed. Clause 119 also provides that the salaries, allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

3. The total recurring annual expenditure towards the pay and allowances of the Chairperson and Members and officers and other employees of the Appellate Tribunal etc., is estimated at Rs. 3.95 crores (rupees three crores ninety five lakhs) per annum. Non-recurring expenditure for accommodation and establishment including furniture, office equipment etc. for the Appellate Tribunal have been estimated at Rs. 39 lakhs (rupees thirty nine lakhs).

4. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 171 of the Bill empowers the Central Government to make rules to provide for among other matters, the time within which the suggestions and objections on the draft National Electricity Plan to be invited by the Authority under the proviso to sub-section (4) of section 3; the payment of fees for **application for grant of licence** under sub-section (1) of section 15; the functions of the National Load Despatch Centre under sub-section (2) of Section 26; the works of licensees affecting the property of owner or occupier under sub-section (2) of section 67; such other cases which may be prescribed under clause (c) sub-section (2) of section 68; allowances and fees payable to Members other than full-time Members for attending the meetings of Authority under sub-section (14) of section 70; other terms and conditions of service of the Chairperson and Members of the Authority under sub-section (15) of section 70; the functions and duties of the Central Electricity Authority under section 73; the salary, allowances and other conditions of service of Chairperson and Members of Central Commission under sub-section (2) of Section 89; the form and manner in which and the authority before whom oath of office and secrecy should be subscribed under sub-section (3) of section 89; the procedure to be prescribed by the Central Government under the proviso to sub-section (2) of section 90; any other matter required to be prescribed under clause (g) of sub-section (1) of section 94; the form in which the Central Commission shall prepare its annual statement of accounts under sub-section (1) of section 100; the form in which and time at which the Central Commission shall prepare its annual report under sub-section (1) of section 101; the form in which and time at which the Central Commission shall prepare its budget under section 106; the form and the fee for filing appeal under sub-section (2) of section 111; the salary and allowances payable to and the other terms and conditions of service of the Chairperson of the Appellate Tribunal and Members of the Appellate Tribunal under section 115; the salary and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 119; the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 120; manner of holding inquiry by an adjudicating officer under sub-section (1) of section 143; the form in which and the time at which service of notices of any person or to the Central Government for the purpose under sub-section (1) of **section 156**; and the manner of delivery of every notice, order or document to be served under sub-section (1) of section 166.

2. Clause 172 of the Bill empowers the Authority to make regulations to provide for, among other matters, the Grid Standards under section 34; suitable measures relating to safety and electricity supply under section 53; the installation and operation of meters under section 55; the rules of procedure for transaction of business under sub-section (9) of section 70; the technical standards for construction of electrical plants and electric lines and connectivity to the grid under clause (b) of section 73; the form and manner in which and the time at which the State Government and licensees shall furnish statistics, returns or other information under section 74.

3. Clause 173 of the Bill empowers the Central Commission to make regulations to provide for, among other matters, period to be specified under the first proviso to of section 14; the form and the manner of the application under sub-section (1) of section 15; the manner and particulars of notice under sub-section (2) of section 15; the conditions of licence under section 16; the manner and particulars of notice under clause (a) of sub-section (2) of section 18; publication of alterations or amendments to be made in the licence under clause (c) of sub-section (2) of section 18; Grid Code under sub-section (2) of section 28; levy and collection of fees and charge from generating companies or transmission utilities or licensees under sub-section (4) of section 28; rates, charges and terms and conditions in respect of intervening transmission facilities under proviso to section 36; payment of the

transmission charges and a surcharge under sub-clause (ii) of clause (d) of sub-section (2) of section 38; reduction and elimination of surcharge and cross subsidies under second proviso to clause (d) of sub-section (2) of section 38; payment of transmission charges and a surcharge under sub-clause (ii) of clause (c) of section 40; reduction and elimination of surcharge and cross subsidies under the second proviso to sub-clause (ii) of clause (c) of section 40; proportion of revenues from other business to be utilised for reducing the transmission charges under proviso to section 41; duties of electricity trader under sub-section (2) of section 52; standards of performance of a licensee or class of licensees under sub-section (1) of section 57; the period within which information to be furnished by the licensee under sub-section (1) of section 59; the terms and conditions for the determination of tariff under section 61; details to be furnished by licensee or generating company under sub-section (2) of section 62; the procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62; the manner of making an application before the Central Commission and the fee payable therefor under sub-section (1) of section 64; the manner of publication of draft tariff order under sub-section (3) of section 64; issue of tariff order with modifications or conditions under sub-section (4) of section 64; the manner by which development of market in power including trading specified under section 66; the powers and duties of the Secretary of the Central Commission under sub-section (1) of section 91; the terms and conditions of service of the secretary, officers and other employees of Central Commission under sub-section (3) of section 91; the rules of procedure for transaction of business under sub-section (1) of section 92; minimum information to be maintained by a licensee or the generating company and the manner of such information to be maintained under sub-section (8) of section 128; and the manner of service and publication of notice under section 130.

4. Clause 175 of the Bill empowers the State Government to make rules to provide for, among other matters, the payment of fees for application for grant of license under sub-section (1) of section 15; the works of licensees affecting the property of other persons under sub-section (2) of section 67; such other matters which may be prescribed under clause (c) of sub-section (2) of section 68; the salary, allowances and other terms and conditions of service of the Chairperson and Members of the State Commission under sub-section (2) of section 89; the form and manner in which and the authority before him oath of office and secrecy should be subscribed under sub-section (3) of section 89; any other matter required to be prescribed by the State Commission under clause (g) of sub-section (1) of section 94; manner of applying the fund under sub-section (3) of section 103; the form in which and time at which the State Commission shall prepare its annual accounts under sub-section (1) of section 104; the form in which and time at which the State Commission shall prepare its annual report under sub-section (1) of Section 105; the form in which and time at which shall the State Commission prepare its budget under section 106; manner of service of provisional order of assessment under sub-section (2) of section 126; manner of holding inquiry by an adjudicating officer under sub-section (1) of section 143; the form in which and the time at which notice to the Electrical Inspector under sub-section (1) of section 156; and the manner of delivery of every notice, order or document to be served under sub-section (1) of section 166.

5. Clause 176 empowers the State Commission to make regulations to provide for, among other matters, period to be specified under the first proviso of section 14; the form and the manner of application under sub-section (1) of section 15; the manner and particulars of application for license to be published under sub-section (2) of section 15; the conditions of licence under section 16; the manner and particulars of notice under clause (a) of sub-section (2) of section 18; publication of the alterations or amendments to be made in the licence under clause (c) of sub-section (2) of section 18; levy and collection of fees and charges from generating companies or licensees under sub-section (3) of section 32; rates, charges and the term and conditions in respect of intervening transmission facilities under proviso to section 36; payment of the transmission charges and a surcharge under sub-clause (ii) of clause (d) of sub-section (2) of section 39; reduction and elimination of surcharge and cross subsidies under

second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39; manner and utilization of payment and surcharge under the fourth proviso to sub-clause (ii) of clause (d) of section 39; payment of the transmission charges and a surcharge under sub-clause (ii) of clause (e) of section 40; reduction and elimination of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (c) of section 40; the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of section 40; proportion of revenues from other business to be utilised for reducing the transmission charges under proviso to section 41; reduction and elimination of surcharge and cross subsidies under fourth proviso to sub-section (2) of section 42; payment of additional charges on charges of wheeling under sub-section (3) of section 42; guidelines under sub-section (4) of section 42; methods and principles by which charges for electricity shall be fixed under sub-section (2) of section 45; reasonable security payable to the distribution licensee under sub-section (1) of section 47; payment of interest on security under sub-section (4) of section 47; electricity supply code under section 50; the proportion of revenues from other business to be utilised for reducing wheeling charges under proviso to section 51; duties of electricity trader under sub-section (2) of section 52; standards of performance of a licensee or a class of licensees under sub-section (1) of section 57; the period within which information to be furnished by the licensee under sub-section (1) of section 59; the terms and conditions for the determination of tariff under section 61; details to be furnished by licensee or generating company under sub-section (2) of section 62; the procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62; the manner of making an application before the State Commission and the fee payable therefor under sub-section (1) of section 64; the manner of publication of draft tariff order under sub-section (3) of section 64; issue of tariff order with modifications or conditions under sub-section (4) of section 64; the manner by which development of market in power including trading specified under section 66; the powers and duties of the Secretary of the State Commission under sub-section (1) of section 91; the terms and conditions of service of the secretary, officers and other employees of the State Commission under sub-section (3) of section 91; rules of procedure for transaction of business under sub-section (1) of section 92; the manner of service and publication of notice under section 130; the form of and preferring the appeal and the manner in which such form shall be verified and the fee for preferring the appeal under sub-section (1) of section 127; and minimum information to be maintained by a licensee or the generating company and the manner of such information to be maintained under sub-section (8) of section 128.

6. The rules made by the Central Government, the regulations made by the Authority, and the regulations made by the Central Commission shall be laid, as soon as may be after they are made, before each House of Parliament.

7. The rules made by the State Government and the regulations made by the State Commission shall be laid, as soon as may be after they are made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

8. The matters in respect of which rules and regulations may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power involved is of a normal character.

IV

BILL NO. 86 OF 2001

A Bill further to amend the Salaries and Allowances of Ministers Act, 1952.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Salaries and Allowances of Ministers (Amendment) Act, 2001.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

58 of 1952.

2. For section 5 of the Salaries and Allowances of Ministers Act, 1952 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

Substitution of new section for section 5. Sumptuary allowance to Ministers.

"5. There shall be paid a sumptuary allowance to each Minister at the following rates, namely:—

(a) the Prime Minister	Rupees three thousand per mensem;
(b) every other Minister who is a member of the Cabinet	Rupees two thousand per mensem;
(c) a Minister of State	Rupees one thousand per mensem;
(d) a Deputy Minister	Rupees six hundred per mensem."

Amendment
of section 6.

3. In section 6 of the principal Act, for sub-section (1A), the following sub-section shall be substituted, namely:—

"(1A) A Minister shall be entitled to travelling allowance in respect of not more than twelve return journeys performed, during each year, within India, for himself and his family, whether travelling together or separately at the same rates at which travelling allowance is payable to such Minister under clause (b) of sub-section (1) in respect of tours referred to in that clause, subject to the overall entitlement of forty eight single journeys in each year."

STATEMENT OF OBJECTS AND REASONS

The Salaries and Allowances of Ministers Act, 1952 provides for the salaries and allowances of Ministers. Section 5 of the said Act provides for sumptuary allowance payable every month to the Members of the Union Council of Ministers. The rates of sumptuary allowance were prescribed in the year 1985 and have not been enhanced since then. With a view to increasing the amount payable to Ministers by way of sumptuary allowance, section 5 of the said Act is proposed to be substituted.

2. Section 6 of the aforesaid Act deals with travelling and daily allowances to Ministers. Sub-section (1A) in section 6 was inserted by the Salaries and Allowances of Ministers (Amendment) Act, 1985 with a view to providing for the facility of six return journeys to a Minister for non-official purposes along with one member of his family in a year. The Salaries, Allowances and Pension of Members of Parliament Act, 1954 as amended in 1998 entitles a Member of Parliament to the facility of thirty-two single air journeys in a year. The existing facility available to the Members of the Union Council of Ministers, however, is inadequate keeping in view the number of air journeys allowed to a Member of Parliament. It would be just and proper that these facilities are enhanced on a suitable scale so that a Minister becomes entitled to travelling allowances in respect of not more than twelve return journeys performed during each year within India for himself and a member of his family, whether travelling together or separately, subject to overall entitlement of forty-eight single journeys in each year.

3. The Bill seeks to achieve the above objects.

L.K. ADVANI.

NEW DELHI;
Dated: 29th August, 2001.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 10/33/98-M&G, dated the 29th August, 2001 from Shri L.K. Advani,
Minister of Home Affairs to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Salaries and Allowances of Minister's (Amendment) Bill, 2001, recommends the introduction and consideration of the Bill in Lok Sabha under article 117(1) and (3) of the Constitution.

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for enhancement of sumptuary allowance admissible to the members of the Union Council of Ministers.

2. Clause 3 of the Bill provides for enhancement in the number of return journeys admissible to a member of the Union Council of Ministers in a year, with or without a member of his family for non-official purposes.

3. The Bill if enacted will involve an expenditure from the Consolidated Fund of India. It is estimated that the expenditure on sumptuary allowances under clause 2 of the Bill would be recurring and of the order of twelve lakhs and twenty four thousand rupees per annum based on the present strength of the Union Council of Ministers. The expenditure under clause 3 of the Bill on providing the facility of return journeys during a year cannot be estimated at present.

G. C. MALHOTRA,
Secretary-General.